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Scrutiny & Overview Committee

Meeting held on Tuesday, 17 August 2021 at 6.30 pm

This meeting will be held remotely and a recording can be viewed on the Council's website

MINUTES

Present: Councillor Sean Fitzsimons (Chair), Councillor Robert Ward (Vice-Chair), Leila Ben-Hassel, Jade Appleton and Joy Prince

Also Present: Councillors Hamida Ali, Oliver Lewis and Callton Young

Apologies: Councillor Shafi Khan

PART A

58/21 **Minutes of the Previous Meeting**

The minutes of the previous meetings held on 4 February, 16 February, 23 March, 30 March, 20 May and 27 May 2021 were agreed as a correct record. Agreement of the minutes for the meeting held on 9 February was deferred until the next meeting of the Committee to allow the information provided to be double checked.

59/21 **Disclosure of Interests**

There were no disclosure of interest made at the meeting.

60/21 **Urgent Business (if any)**

There were no urgent items of business for consideration by the Scrutiny & Overview Committee at this meeting.

61/21 **CALL-IN: Novation of building works and profession services contracts from Brick by Brick for Fairfield Halls**

The Scrutiny & Overview Committee considered a call-in request of the key decisions set out in the 'Novation of building works and professional services contracts from Brick by Brick for Fairfield Halls' Cabinet report. The decisions taken in this report were made by the Cabinet at its meeting held on 26 July 2021.

The Chair of the Committee explained the process for considering a call-in, confirming that the Committee needed to agree whether to review the decision or not and if it was decided to proceed, to confirm how much time it wished to allocate for the discussion of the item. The Committee agreed that it would review the decision and allocated two hours minutes for its consideration.

The Chair went on to explain that there were three outcomes the Committee could reach as a result of its review. These were:-

1. That no further action was necessary and the decision could be implemented as originally intended.
2. To refer the decision back to the Cabinet for reconsideration, outlining the nature of the Committee's concerns
3. To refer the decision to Council, if the Committee considered that the decision taken was outside of the Budget and Policy Framework.

At the outset of the item an opportunity was given to the Committee lead on the call-in, Councillor Robert Ward, to outline the grounds for its submission. It was highlighted that both Brick by Brick and Fairfield Halls were of significant importance to the Council and as such before the decision on contract novation was made, it was important for the Scrutiny & Overview Committee to seek reassurance on a number of areas of concern.

Given there had been a significant cost increase over the lifespan of the refurbishment project, reassurance was sought that potential future costs arising from novation were both understood and under control. It was noted that an alternative option was to keep the contract with Brick by Brick, as such further explanation was sought on why this option had been rejected. As the contractual arrangements with Brick by Brick had previously been described as unusual and with the outcome from the Grant Thornton value for money review still awaited, reassurance was sought that there would not be an increased risk by proceeding with novation at this stage. Finally assurance was sought that the Council had the requisite skills in place to manage the closure of the Vinci contract going forward.

Due to the complexities of novation, it was debated whether the Committee should be asking the Cabinet to delay the implementation of its decision until after the external auditor had delivered its value for money review. The Chair of the Scrutiny & Overview Committee highlighted that as it was not yet clear when the value for money review would be finalised, it was difficult to recommend delaying the decision. Due to the potential sums involved in the novation it was important for the Committee to review the decision taken by the Cabinet in order to gain reassurance that it would deliver the best outcome for both the Council and council tax payers.

Following this introduction, the Leader of the Council, Councillor Hamida Ali, the Cabinet Member for Culture & Regeneration, Councillor Oliver Lewis and the Executive Director for Place, Sarah Hayward, were given the opportunity to explain the reasons for proceeding with the contract novation. It was highlighted that the decision should be considered within the context of the other decisions taken by the Cabinet since November 2020 to address the governance issues highlighted in the Strategic Review of the Council's Companies and other reviews. As the sole shareholder of Brick by Brick it was important to maximise the return to council tax payers and by bringing the contracts for the refurbishment of Fairfield Halls into the Council it allowed Brick by Brick to focus on its housing delivery programme. Novation also gave the Council full control over the Fairfield Halls venue, allowing it to move

forward with the completion of the Vinci contract and identify any further work required to deliver a first class venue.

Prior to the Committee having the opportunity to ask questions about the decision, concern was raised by Councillor Robert Ward about what was felt to be an ongoing pattern of not providing Scrutiny with the information it required to fulfil its role effectively. In response the Council's Interim Monitoring Officer, Asmat Hussain, advised that there had not been a refusal to provide information, but due to officer capacity to locate the information requested, there had been a delay in providing some of the information requested. It was agreed that the Councillor Ward would meet with the Interim Monitoring Officer outside of the meeting to discuss these concerns.

At this stage of the meeting the Chair of the Committee proposed a motion that as part of the information provided was restricted due to commercial sensitivity it would be sensible to move into a Part B session to allow discussion of this information before returning to the public meeting to conclude the item. This motion was approved by the Committee.

Having completed asking questions about the information set out in the confidential section of the Cabinet report, the Committee meeting returned to a public session. Before continuing their questioning on the decision, the Chair of the Committee summarised the discussion held in private, which included questioning of the potential additional costs to the Council, the total refurbishment cost, the process for transferring the contracts and the likely challenges for the Council as a result of completing the novation of the contracts.

As concern had been highlighted in the call-in request about the potential risks presented by the unusual contractual arrangements used by Brick by Brick for the refurbishment, further detail on this was requested. It was advised this related to the mechanism for letting the contract and the licensing agreement, both of which were being looked at as part of the external auditor's value for money review. Further work was needed on the review and as such confirmation could be given on when it would be completed at this stage.

It was accepted by the majority of the Committee that the decisions flowing from the original decision to wind-up Brick by Brick, meant that the novation of the contracts for the refurbishment of Fairfield Halls was the next logical stage in the process. In doing so it would also allow Brick by Brick to focus on completing its housing building programme. It was suggested that the Cabinet report could have made it clearer that a benefit of novation was enabling Brick by Brick to focus on house building.

In response to a question about any potential tax liability falling to the Council as a result of novation, it was confirmed that tax was unlikely to have a material impact. The Council was able to claim back VAT and as Brick by Brick had not been making a profit, there was no tax issues in that regard. In relation to other liabilities it was confirmed that the liability of the contractor would still remain with the contractor after novation and any insurance in

place for this would continue to run. As the Fairfield Halls was owned by the Council, any other liabilities would remain with the Council.

The key risks to proceeding with contract novation were questioned, with it confirmed that as the contract with Vinci was still in dispute, there was uncertainty about any further sums that would need to be paid. There was also a need to ensure that the process was properly resourced going forward. However, if the contract was left with Brick by Brick there was a risk that additional work would be required once the contract had been closed and by leaving it with Brick by Brick it would mean it took longer to complete the work. On balance it had been decided it was preferable to move the contract within the Council's control.

As the value for money review had not yet been completed, it was questioned whether there was an increased risk by proceeding with novation before the outcome was known and should there be any illegality found, how it would impact upon the Council. It was confirmed that the Council had checked with the auditor about the proposal to novate the Fairfield Halls refurbishment contracts, who had confirmed that they did not have an issue with novation. It was also confirmed that the novated contracts did not related to the primary concern of the value for money review, which was related to the tender process and state aid.

In response to a question about whether there was a client management framework in place to manage the process after novation, it was confirmed that the Council was in the process of recruiting a Commercial Director, who would provide additional director capacity. Including the support contracted from the quantity surveyor, Chronos Ltd and MICA architects, there was confidence there was sufficient capacity to manage closing the Vinci contract.

It was confirmed that there was not currently a maintenance schedule in place for Fairfield Halls, but it needed to be completed as soon as possible. Once the contract had been closed, the Council would then be in a position to set out the future asset strategy for the venue.

It was highlighted that the Fairfield Halls refurbishment had previously fallen under the portfolio of the Leader of the Council, Councillor Hamida Ali, as part of Brick by Brick. As the Cabinet report for the contract novation listed the Cabinet Member for Culture and Regeneration, Councillor Oliver Lewis, as the lead member, there was a concern that there may be confusion about political accountability for the project moving forwards. It was agreed that political accountability needed to be clarified as soon as possible.

At the conclusion of the questioning the Chair thanked both the Officers and Members in attendance for their engagement with the questions of the Committee.

The Scrutiny and Overview Committee moved to deliberating on the outcome for the call-in. There was a difference of opinion amongst the Committee on how best to proceed, with two Members of the opinion that the decision should be referred back to the Cabinet with a request to delay the decision

until the outcome of the value for money review was known. The other four members of the Committee agreed that no further action was needed at this stage as it was a greater risk to the Council in leaving the contract with Brick by Brick and the value for money report was not a material consideration to the decision. As the majority of the Committee was in favour of no further action on the call-in this decision was carried. It was also agreed that a number of recommendation that had been noted during the meeting would be submitted to the Cabinet for further consideration.

Information Requests

Under the powers set out in Part 4B: Access to Information Procedure Rules, of the Council's Constitution, the Committee agreed to make the follow requests for additional information:-

1. A summary of the difference between the valuation undertaken by Chronos Ltd in comparison with that of the previous contracted quantity surveyor.
2. A breakdown of the total costs included in the £69m brought into the Council from Brick by Brick as capital expenditure.
3. A copy of the legal advice provided by Gowling WLG to the Council concerning EU State Aid relating to the setting up of and the further public funding of Brick by Brick.

Conclusions

Following its consideration of the call-in request and the subsequent information gathering during questioning at the meeting, the Scrutiny & Overview Committee reached the following conclusions:

1. There was differing views amongst the Committee about the outcome for the call-in request, with some Members of the view that it should be referred back to the Cabinet for further consideration once the Grant Thornton value for money review had been completed. However, the majority of the Committee concluded the review was not a material consideration for decision and as such it could proceed as originally intended.
2. The majority of the Committee concluded that the risk of keeping the Fairfield Halls refurbishment contract with Brick by Brick outweighed the risks of novating the contract to the Council. In particular bring the contract within the control of the Council would help to safeguard the public purse and allow work to be completed on the venue.
3. There was further concern voiced about the provision of information to Scrutiny in a timely manner, which was especially disappointing considering the issue had been raised a number of times before. It was agreed the Vice-Chair of the Committee would meet with the Interim Monitoring Officer to discuss the issue. It was also agreed that the Access to Information Protocol was needed as soon as possible to provide a clear framework for the provision of information.
4. Given the aforementioned concerns about the provision of information to Scrutiny, the Committee agreed that every effort needed to be taken

to correctly catalogue and file any documents handed over to the Council as part of the novation

5. As responsibility for Brick by Brick fell within the portfolio of the Leader of the Council and the lead for the Cabinet report for the contract novation was the Cabinet Member for Culture and Regeneration, there was concern that this may lead to confusion and given the importance of Fairfield Halls it was agreed there needed to be clear political accountability.
6. Although it was accepted that the Vinci contract needed to be closed before an ongoing programme of maintenance could be prepared for Fairfield Halls, it was agreed that this needed to be in place as soon as possible to safeguard the venue for the longer term.
7. There was a concern that the Cabinet report did not clearly state the case for proceeding with the novation of the Fairfield Halls refurbishment contract and had this been the case it may have prevented the need for a call-in. The Committee felt that this was reflective of a wider issue with quality of committee reports and given they helped to inform the public perception of the Council, it was agreed that this should be addressed as part of the governance improvement work.

Recommendations

Having considered the information presented at the meeting, the Scrutiny and Overview Committee agreed to submit the following recommendation for the consideration of the Cabinet:-

1. It is recommended that the political lead from the Cabinet for the completion of the Fairfield Halls refurbishment project is confirmed as a priority, to ensure there is the proper level of accountability.
- 2a. It is recommended that an ongoing programme of maintenance for Fairfield Halls is completed as soon as possible.
- 2b. It is recommended that the programme of maintenance is scheduled for regular scrutiny to provide public reassurance the venue is being maintained to an appropriate standard.
3. It is recommended that work to improve the quality of committees reports, both in terms of training for report authors and ensuring report formats meet best practice standards, is included as part of the ongoing governance improvement work of the Council.
4. The Committee would like to request that the Access to Information Protocol is completed as soon as possible and any consultation on the document should include the Scrutiny Chairs.
5. The Committee would like reassurance that there is sufficient officer capacity and an appropriate document management system in place to ensure that any documents received as a result of the novation are properly catalogued and filed for future reference.

62/21

Exclusion of the Press and Public

The following motion was moved by Committee Chair 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 remainder of the meeting.

63/21

CALL-IN: Novation of building works and profession services contracts from Brick by Brick for Fairfield Halls

The held a private session to discuss the confidential information set out in the Part B section of the agenda.

The meeting ended at 10.15 pm

Signed:

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Date:

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