

REPORT TO:	Cabinet 15 November 2021
SUBJECT:	Governance of Brick By Brick Croydon Ltd.
LEAD OFFICER:	Peter Mitchell - Interim Director of Commercial Investment Richard Ennis - Interim Corporate Director Resources
CABINET MEMBER:	Councillor Hamida Ali - Leader of the Council
WARDS:	All
CORPORATE PRIORITIES 2020-2024	
This report is produced in the context of the Report in the Public Interest and the Croydon Renewal Plan and addresses the requirement for improved governance	
FINANCIAL IMPACT	
There is no direct financial impact arising from the recommendations of this report.	
FORWARD PLAN KEY DECISION REFERENCE NO.: This is not a Key Decision	

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

1. RECOMMENDATIONS

The Cabinet is recommended to (acting, where relevant, on behalf of the Council exercising its functions as sole shareholder of Brick by Brick Croydon Ltd):

- 1.1 Approve the establishment of the Brick by Brick Shareholder Cabinet Advisory Board (the "Advisory Board") for the purposes and with the responsibilities described in this report.
- 1.2 Approve the appointment of the Leader (Chair), Cabinet Member for Resources & Financial Governance and Cabinet Member for Croydon Renewal to the Advisory Board, with other invited attendees as described in this report.
- 1.3 Approve the Terms of Reference for the Advisory Board set out at Appendix 1 to this report.
- 1.4 Approve the process for appointment and removal of directors from the Brick By Brick board of Directors in accordance with paragraph 3.14 of this report; and delegate authority to Corporate Director of Resources & Deputy Chief Executive in consultation with the Leader of the Council, Cabinet Member for Croydon Renewal and Chief Executive on appointments and removals of Directors of the board of Brick by Brick Croydon Ltd, who shall have authority to exercise shareholder functions on behalf of the Council to approve such appointments

and removals (any such appointments or removals shall be notified as part of the next scheduled report to Cabinet).

- 1.5 Delegate to the members of the Advisory Board the authority to exercise limited shareholder functions on behalf of the Council when making recommendations to Brick By Brick relating to risk in accordance with paragraph 3.8 (recognising, however, that Brick By Brick shall make its own independent decisions).

2. EXECUTIVE SUMMARY

- 2.1 The purpose of this report is to make recommendations for strategic oversight, supervision and monitoring to ensure good governance practice in relation to the Council's wholly owned company, Brick By Brick Croydon Ltd.
- 2.2 Good governance of Brick By Brick is an integral part of the governance arrangements of the Council, as the Council's investment in this company involves large amounts of public money and the stewardship of public resources.
- 2.3 Recommendation 20 of the Report in the Public Interest suggests that: 'The Cabinet and Council should review its arrangements to govern its interest in subsidiaries, how the subsidiaries are linked, the long-term impact of the subsidiaries on the Council's financial position and how the Council's and taxpayers interest is safeguarded.
- 2.4 As part of the on-going and wider measures that have been implemented and are ongoing concerning internal control measures. These have included reviewing those groups that meet as officers, providing technical expertise and guidance, how members are briefed and appraised to enable monitoring and challenge as well as member only bodies with decision making processes.
- 2.5 Aligned to this work there requires an advisory body which can regularly monitor, review and appraise the evolving matters of Brick by Brick, whilst maintaining Cabinets ultimate decision making authority, or delegating to this group or Officers with appropriate remit under the terms of the Councils scheme of delegation.
- 2.6 Cabinet on 26th July 2016 approved the governance arrangements for the Council's other Group companies, where it was agreed to establish the Croydon Companies' Supervision and Monitoring Panel ("CCSMP"). Brick by Brick has been considered separately to the Group governance arrangements because of the special attention required to supervise and monitor the Council's interest in Brick By Brick, which is currently being monitored by the Shareholder & Investment Board ("S&IB") along with regular reporting to Cabinet, currently on a quarterly basis.

3. DETAIL

- 3.1 As a result of the Report in the Public Interest and the Council issuing a Section 114 notice, the future of Brick By Brick had been under review. Cabinet decided on 12th July 2021 to proceed with a modified build out scenario of 23 Brick By Brick sites and rejected an offer to sell the company. Given the Council will continue to have an ongoing relationship with Brick By Brick, the arrangements to monitor the Council's interest in Brick By Brick has therefore been considered further.
- 3.2 Previously, monitoring of Brick By Brick was undertaken by the S&IB and annual reporting to Cabinet. The S&IB was originally a hybrid Member and officer group with a wider remit, which included Croydon Affordable Homes. Some shareholder decisions were also made by Cabinet Members. The previous terms of reference for this group is included at Appendix 2.
- 3.3 Whilst the future of Brick By Brick was being considered by Cabinet, the S&IB became a de facto Member consultation group with officers and Brick By Brick Directors attending in an advisory capacity and it convened more regularly. Shareholder decisions were also no longer made by Cabinet Members of the S&IB but were all referred to Cabinet for Cabinet to either decide or agree a specific delegation with appropriate consultation requirements.
- 3.4 Following Cabinet's decision on 12th July 2021, the ongoing need to monitor Brick By Brick in response to recommendations made by the Report in the Public Interest has been considered further to ensure that the Council implements appropriately open and transparent accountability of Brick By Brick's performance and that the Council's role as shareholder gives visibility to Cabinet and Council.
- 3.5 In order to address this, it is recommended that the Brick By Brick Shareholder Cabinet Advisory Board be set up, replacing the S&IB taking over the Brick By Brick functions, with the Croydon Affordable Homes element being monitored via oversight in the Capital Board and reporting via existing and current Cabinet members and governance routes (including CCSMP). This Advisory Board will be similar to the S&IB, which will cease, with some additional key differences, which will ensure greater scrutiny and oversight along with a Clienting function.
- 3.6 Role and remit:

The role of the new Advisory Board will be to help enable the Council to actively supervise and monitor its investment and relationship with Brick by Brick, including all financial and other transactions, particularly lending arrangements. The Advisory Board is recommended to only consider Brick By Brick in order to give this company the special attention required to supervise and monitor the Council's interest. Whereas the S&IB was originally intended to also cover Croydon Affordable Homes.

- 3.7 Membership:

The new Advisory Board is recommended to be Member only, to allow greater

Member oversight. Any officer attendance will be in an advisory capacity only. This is a change from the S&IB, which was originally a hybrid Member and officer group and this arrangement had the potential to blur the boundaries between the Member's role and the Officer's role.

3.8 Decision making and shareholder functions:

The new Advisory Board is recommended not to have any decision making powers and to dispense with any pre-existing delegations to Cabinet Members under the previous S&IB terms of reference and, instead, refer all decisions to Cabinet (or seek specific delegations from Cabinet). Although the Advisory Board is not intended to exercise shareholder reserved matters (as defined in the Articles of Association of Brick By Brick), it is recommended that, where appropriate, the Advisory Board (in the Council's capacity as Shareholder) should have the ability to highlight issues to Brick By Brick where doing so will promote the values of Brick By Brick and does not interfere with the legitimate rights of the Directors of Brick By Brick to exercise their general authority. Therefore a specific delegation to the members of the Advisory Board is recommended in order to carry out this function (recommendation 1.5). In exercising this function the members shall recognise that Brick By Brick will make its own independent decisions.

3.9 Client function:

The S&IB terms of reference envisaged that there would be a clienting group, however this does not appear to have been fully implemented, it is noted that one did commence in Autumn 2018 as a monitoring group but was not effective and this group evolved into the S&IB. The terms of reference for the new Advisory Board recommend a new client representative, the Director of Commercial Investment & Capital (new role), to allow a single point of contact for Brick By Brick and to facilitate regular reporting to the Brick By Brick Advisory Board. They shall also regularly brief the Cabinet Member for Resources & Financial Governance. Additionally, it is recommended that a new Brick By Brick Client Supervision & Monitoring Panel is implemented to enable consultation between the Director of Commercial Investment & Capital and relevant officers regarding the quarterly reporting to Cabinet.

3.10 Reporting:

In accordance with the Cabinet report of 12th July, Brick By Brick shall provide monthly reports to the Council, which shall be presented to Cabinet on a quarterly basis. These reports will also be presented to the Advisory Board when it meets, along with reports from the Director of Commercial Investment & Capital, which shall be prepared in consultation with relevant officers at the Brick By Brick Client Supervision & Monitoring Panel. This shall be in addition to regular briefings between the Director of Commercial Investment & Capital and the Cabinet Member for Resources & Financial Governance. A flowchart of meetings and reporting has been included at Schedule 3 of the draft terms of reference.

3.11 Transparency:

To demonstrate openness and transparency (but subject to any overriding legislative requirements, confidentiality or commercial sensitivity) the minutes of the Advisory Board shall be made available as part of the quarterly Cabinet reports. Any commercially sensitive items can be set out in a Part B of any Cabinet reports.

3.12 Good governance principles:

The good governance principles, as set out in the Governance paper presented to Cabinet on 26th July 2021, have also been included in the terms of reference for the Advisory Board.

3.13 Meetings of the Advisory Board shall:

It is proposed that the Advisory Board meet on a six week rotation or as otherwise required and that its first meeting will be held within two months of Cabinet approval of this report's recommendations. The meetings shall be chaired by the Leader and be attended by the Directors of Brick By Brick and other officers as may be invited from time to time. The meetings shall operate according to the terms of reference as set out at Appendix 1.

3.14 Director appointments and removals:

3.14.1 At present, there are only two non-executive Directors of Brick By Brick. In accordance with the Articles of Association of Brick By Brick (as amended), this is the minimum number of Directors and there can be a maximum of four Directors (though this can be changed by ordinary resolution). The Board of Directors may comprise of an Executive Director (if appointed), Finance Director (if appointed) and Non-Executive Director(s).

3.14.2 It is likely that additional Directors will need to be considered in future, particularly given the minimum number of Directors are currently appointed. As such, it is recommended that Cabinet approve a process to appoint Directors. Given the minimum number of Directors are currently appointed, it would also be prudent to ensure any urgent appointments can be made and it is therefore recommended that authority in such circumstances should be delegated to the Director of Commercial Investment & Capital, in consultation with the Chief Executive and the Leader with any such appointments or removals being notified as part of the next scheduled report to Cabinet.

3.14.3 The process for the appointment of Directors is recommended to be:

- Brick By Brick Directors and the Director of Commercial Investment & Capital, consult to consider what expertise and skills are required;
- Brick By Brick draft a role description, to be approved by the Director of Commercial Investment & Capital;
- The Director of Commercial Investment & Capital shall approve any proposed remuneration (in a shareholder representative capacity);

- Brick By Brick advertise the role and run a recruitment process;
- Brick By Brick consult the Director of Commercial Investment & Capital regarding candidates and shortlisting;
- The Director of Commercial Investment & Capital shall be included on interview panels on behalf of the Council (in a shareholder representative capacity);
- Brick By Brick and the Director of Commercial Investment & Capital agree any offer;
- Appointment of Director following articles of association (by ordinary resolution of the shareholder) and the Cabinet delegation (as set out in this report, if approved)
- Outcome reported to Cabinet at its next scheduled Brick By Brick quarterly reporting

This recommended process ensures that there is a rigorous selection procedure and that both the Council and Brick By Brick collaborate. As part of this process, the Director of Commercial Investment & Capital may, where relevant, exercise shareholder functions on behalf of the Council.

3.15 Although CCSMP will have separate reporting and governance arrangements to Brick By Brick, when the Chief Executive reports to Cabinet in respect of Brick By Brick, Cabinet will also be asked to note the reports presented separately by the Chair of CCSMP on the Group companies to ensure holistic consideration of the Council's Group entities.

4. CONSULTATION

4.1 The Leader, Cabinet Member for Resources & Financial Governance and Cabinet Member for Croydon Renewal have been consulted as part of the Shareholder and Investment Board along with the Directors of Brick By Brick.

5 PRE-DECISION SCRUTINY

5.1 This report has not been referred to Overview and Scrutiny Committee prior to being presented to Cabinet.

6 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

6.1 There are no immediate or additional financial consequences arising directly from the report. The costs of the new Advisory Board will be met from existing budgets.

The proposals should enable the Council to act more dynamically and strategically in response to issues or concerns affecting Brick By Brick, preventing or mitigating against procedural or financial failures.

6.2 Approved by: Nish Popat, Head of Finance (Corporate & Treasury Management).

7. LEGAL CONSIDERATIONS

7.1 The Head of Commercial and Property Law comments on behalf of the Director of Law and Governance that the recommendations in this report seek to address Recommendation 20 of the Report in the Public Interest in respect of its interest in Brick By Brick Croydon Ltd and complement the supervision and monitoring group already established for the wider Group companies (CCSMP).

7.2 Approved by Nigel Channer, Interim Head of Commercial and Property Law on behalf of the Interim Director of Law and Governance

8. HUMAN RESOURCES IMPACT

8.1 There are no immediate HR considerations arising from this report for Croydon Council employees or staff. If any should arise, these will be managed under the Council's policies and procedures.

8.2 Approved by: Gillian Bevan, Head of Human Resources (Resources & ACE).

9. EQUALITIES IMPACT

9.1 The proposed changes reflected in the recommendations are designed to improve the Council's internal processes for governance of Brick By Brick in which it has an ownership interest. The nature of such proposals will be neutral in terms of impact on groups that share protected characteristics

9.2 Approved by: Denise McCausland, Equalities Programme Manager.

10. ENVIRONMENTAL IMPACT

10.1 There are no environmental impacts arising from this report

11. CRIME AND DISORDER REDUCTION IMPACT

11.1 There are no crime and disorder impacts arising from this report

12. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

12.1 The report makes recommendations for good Council governance practice in relation to Brick By Brick, the Council's wholly owned company.

13. OPTIONS CONSIDERED AND REJECTED

13.1 Options considered:

Do Nothing – this will not address the findings and recommendations of the Report in the Public Interest and fails to implement improved governance practice - Not recommended

Include Brick By Brick within CCSMP's remit

Advantage: holistic oversight of all Group companies.

Disadvantage: Risks the majority of CCSMP's time being spent on Brick By Brick, given the special attention required and therefore not applying adequate resource to monitoring other Group companies

Not recommended. The advantage of holistic oversight can be achieved by Cabinet as they will be asked to note the reports regarding Brick By Brick when considering reports from CCSMP and vice versa.

Officer only (ELT/ Senior Officers) group

Advantages:

- Allows the Group to be more operational and task focused
- Preserves the role of the Member with regards to strategy setting and agreeing and not inadvertently becoming responsible for operational implementation.
- Can be more flexible and responsive than a Board involving Members where urgent recommendations are required to be made to Cabinet or urgent matters need to be considered.

Disadvantages:

- Members not feeling sighted enough prior to formal reports being presented to Cabinet
- Risk of officer's formulating recommendations not then agreed by the Executive
- Need to arrange and ensure key Members / relevant portfolio holders are sighted in some form and have opportunity to comment prior to Cabinet recommendations being finalised.

Not recommended. The advantage of a more operational and task focused matters can still be achieved in an officer forum i.e. the Brick By Brick Client Supervision & Monitoring Panel

Member & Officer group

Advantages:

- Ensures through joint development of recommendations that those are more likely to be approved when presented for final decision
- Same advantages as a Member group:
 - Ensures full Member oversight and involvement from an early stage and ensure Member accountability for decisions made

- Enables Members to account wider Policy and corporate priorities in formulating recommendations for Cabinet

Disadvantage:

- Confuses and blurs the boundaries between the Members role and the Officer's role & potentially causes confusion as to responsibility

Not recommended. This arrangement would be the same as the previous governance. Officer input can be achieved in an advisory capacity at a Member board, which makes the roles and responsibilities clear.

14. DATA PROTECTION IMPLICATIONS

14.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?

NO

14.2 HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?

NO - The Interim Director of Commercial Investment and Capital comments that the implementation of proposals does not involve processing of personal data.

14.3 Approved by: Peter Mitchell, Interim Director of Commercial Investment and Capital

CONTACT OFFICER:

Peter Mitchell, Interim Director of Commercial Investment.

APPENDICES TO THIS REPORT

Appendix 1 - Terms of reference

Appendix 2 – previous terms of reference

BACKGROUND PAPERS

None.