

EXECUTIVE, RESOURCES AND CONTRACTS POLICY DEVELOPMENT AND SCRUTINY COMMITTEE

Minutes of the meeting held at 7.00 pm on 23 November 2022

Present:

Councillor Simon Fawthrop (Chairman)
Councillor Shaun Slator (Vice-Chairman)
Councillors Jeremy Adams, Felicity Bainbridge,
Mark Brock, David Cartwright QFSM, Kira Gabbert,
Julie Ireland, Simon Jeal, Jonathan Laidlaw,
Ruth McGregor, Tony Owen, Will Rowlands, Mark Smith
and Melanie Stevens

Also Present:

Councillor Christopher Marlow, Portfolio Holder for Resources,
Commissioning and Contracts Management

Councillors Alisa Igoe, Alison Stammers, Colin Hitchins and
Aisha Cuthbert

57 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

Apologies were received from Councillor Robert Evans and Councillor Felicity Bainbridge attended as substitute.

58 DECLARATIONS OF INTEREST

The Chairman, Councillor Simon Fawthrop, declared that he was an employee of BT and would be leaving the meeting during the consideration of Item 8(12) – IT Transformation – with the Vice-Chairman taking the Chair. Councillor Fawthrop also declared that his wife was an employee of the Council.

Councillor Stammers declared, in respect of Item 7(d) Redevelopment of Chislehurst Library, that she was the Chairman of the two Patient Participation Groups for the GP Practices.

59 QUESTIONS FROM COUNCILLORS AND MEMBERS OF THE PUBLIC ATTENDING THE MEETING

Two oral questions and two written questions were received for response by the Chairman and these are attached at Appendix A.

23 November 2022

60 MINUTES OF THE EXECUTIVE, RESOURCES AND CONTRACTS PDS COMMITTEE MEETING HELD ON 18 OCTOBER 2022 (EXCLUDING EXEMPT ITEMS)

Councillor Mark Smith highlighted that at the meeting in addition to the pollution report requested, he had also requested that a financial assessment be provided.

The minutes of the Executive, Resources and Contracts PDS Committee meeting held on 18 October 2022, were agreed and signed as a correct record subject to the amendment outlined above.

**61 MATTERS OUTSTANDING AND WORK PROGRAMME
Report CSD22125**

The report dealt with the Committee's business management including matters outstanding from previous meetings and the proposed work plan for the remainder of the year.

RESOLVED: That the report be noted.

62 FORWARD PLAN OF KEY DECISIONS

The Committee noted the Forward Plan of Key Decisions covering the period November 2022 to January 2023.

**63 RESOURCES, COMMISSIONING AND CONTRACTS
MANAGEMENT PORTFOLIO - PRE-DECISION SCRUTINY**

The Committee considered the following reports where the Resources, Contracts and Commissioning Portfolio Holder was recommended to take a decision:

**A TREASURY MANAGEMENT - QUARTER 2 PERFORMANCE
2022/23 & MID-YEAR REVIEW
Report FSD22084**

The report summarised treasury management activity during the second quarter of 2021/22 and included a mid-year review of the treasury management strategy statement and annual investment strategy (Appendix 4). The report ensured that the Council was implementing best practice in accordance with the CIPFA Code of Practice for Treasury Management. Investments as at 30 September 2022 totalled £390.6m (£427.6m at 30 September 2021) and there was no outstanding external borrowing.

A Member noted that the returns being achieved from investments in the National Bank of Kuwait and the Qatar National Bank were in line with the returns achieved from High Street Banks and questioned whether there was any regime in which the Council would not invest. In response, the Head of

Corporate Finance and Accounting explained that any investments were in line with the criteria established in the Council's Treasury Management Strategy. Investments were not an endorsement of a regime and one of the key considerations was to maximise the income generated from investment. The Council's professional advisers provided a list of countries which met the minimum credit ratings required. The Chairman noted that the investments were in the UK branch of the banks, were governed by the FCA and needed to comply UK laws and regulations.

In response to a question, the Head of Corporate Finance and Accounting confirmed that the Council did not have a responsible investment policy, however, the Treasury Management Strategy was presented to Committee annually and would next be presented in February 2023. The Head of Corporate Finance and Accounting reported that CIPFA guidance had begun to introduce an ethical dimension to decisions around treasury management.

In response to a question, the Head of Corporate Finance and Accounting agreed to provide a breakdown of the multi-asset fund following the meeting.

The Director of Finance explained to the Committee that the Council's approach to Treasury Management focused on maximising returns on investments and tried to deal with volatility in the market through an income stabilisation fund. This was one of the long-term investments held by the Council.

RESOLVED: That the Portfolio Holder be recommended to:

- 1. Note the Treasury Management performance for the second quarter of 2022/23;**
- 2. Recommend that Council approve the 2022/23 prudential indicators as set out in Appendix 4.**

B CAPITAL PROGRAMME MONITORING QUARTER 2 2022-2023

On 30 November 2022, the Executive would receive a report summarising the current position on capital expenditure and receipts following the second quarter of 2022/23 and would be asked to agree a revised capital programme for the four-year period 2022/23 to 2025/26. This report highlighted changes to be put to the Executive and the Leader in respect of the capital programme for the Resources, Commissioning and Contract Management portfolio. The revised programme for this portfolio was set out in Appendix A and detailed comments on individual schemes were shown in Appendix B.

RESOLVED: That the Portfolio Holder be recommended to note and acknowledge the changes to be put to the Executive on 30 November 2022.

23 November 2022

C INSURANCE FUND ANNUAL REPORT Report FSD22067

The report advised Members of the Insurance Fund position as at 31st March 2022 and presented statistics relating to insurance claims for the last two years. In 2021/22, the total Fund value decreased from £4.383m to £4.002. A mid-year review of the Fund had also been carried out and at this stage, it was estimated that the final Fund value as at 31st March 2023 would decrease to approximately £3.488m. The position would continue to be monitored throughout the year, but Members were asked to note at this stage that potential additional contributions may need to be considered as part of the 2023/24 budget setting process.

RESOLVED: That the Portfolio Holder be recommended to

- 1. Note the contents of the report**
- 2. Note the potential increase in contributions to the Insurance Fund for the 2023/24 budget setting process.**

D CHISLEHURST LIBRARY REDEVELOPMENT UPDATE & NEXT STEPS

Following a marketing exercise, a decision was taken in 2020 to enter into a Development Agreement with Prime Developments for the delivery of a new scheme on the existing site of Chislehurst Library, which would provide a new library facility for the Council as part of a wider mixed-use development. Regrettably, the original terms of the offer that the decision to enter into a Development Agreement with Prime Developments was predicated on, are no longer viable and the transaction unable to progress.

The report was therefore to update Members on the latest position, and to recommend that the existing library was retained as an ongoing operational facility for provision of library services, with no further market testing to be pursued.

In opening the discussion, Chislehurst Ward Councillor and Committee Member Councillor Mark Smith highlighted that the recommendation was regrettable but inevitable. The recommendations were a result of 10 lost years of investment, the impact of the pandemic and rising inflation costs. The building now required a level of investment going forward which would enable much needed disabled access and public toilets to be installed in the property. Only with investment could the building realise its potential as a useful community asset.

In response, the Director for Housing Planning and Regeneration confirmed that the Operational Property Review (for consideration later in the meeting) set out the strategic direction for the Council's identified maintenance liabilities and the library was included in this.

In response to a question from the Chairman concerning why the option to remarket the property was being ruled out, the Head of Estates and Asset Management explained that the recommendation had been made to support the business case to maintain the property. However, taking on board comments submitted before the meeting, Officers were proposing the following amendment to recommendation 3:

That the property is not remarketed, nor any negotiations with potentially interested developers undertaken. However, should the Council undertake any redevelopment of its own assets within the immediate Chislehurst area, then the reprovision of a library in such a scheme would, as a matter of course, be considered thus enabling a future freehold disposal or opportunity to self-deliver social housing.

The Committee agreed that any amendment to the recommendation should be discussed and agreed with the Portfolio Holder with local Ward Councillors asked to comment on the final wording.

RESOLVED: That the Portfolio Holder be recommended to:

- 1. Agree that the terms of the proposal by the preferred purchaser, Prime Developments, are no longer viable and that the previously agreed transaction will not be progressing.**
- 2. Agree that the property is retained as an operational asset for the purpose of continuing to deliver library provision for the local area.**
- 3. Agree that the property is not remarketed, nor any negotiations with past bidders undertaken.**
- 4. Agree that should the Council undertake any redevelopment of its own assets within the immediate Chislehurst area, then the reprovision of a library in such a scheme would as a matter of course, be considered thus enabling a future freehold disposal or opportunity to self-deliver social housing. Equally, should a similar such opportunity arise on non-Council owned land, that it be considered providing that has not already been explored and discounted during past marketing exercises.**

64 PRE-DECISION SCRUTINY OF EXECUTIVE REPORTS

The Committee considered the following reports on the Part 1 agenda for the meeting of the Executive on 30 November 2022:

23 November 2022

**(5) BUDGET MONITORING 2022-2023
Report FSD22086**

The report provided the first budget monitoring position for 2022/23 based on expenditure and activity levels up to the end of September 2022. The report also highlighted any significant variations which would impact on future years as well as any early warnings that could impact on the final year end position.

RESOLVED: That the Executive be recommended to

- 1. consider the latest financial position;**
- 2. note that a projected net overspend on services of £9,568k is forecast based on information as at July 2022.**
- 3. consider the comments from Chief Officers detailed in Appendix 2;**
- 4. note a projected reduction to the General Fund balance of £1,478k as detailed in section 3.3;**
- 4. note the full year cost pressures of £9.369m as detailed in section 3.4;**
- 5. agree to the release of funding from the 2022/23 central contingency as detailed in paragraphs 3.2.2 to 3.2.6;**
- 6. agree to the release of £314k from the CEF Health Reserve Fund for expenditure in the CEF department as detailed in para. 3.8;**
- 7. identify any issues that should be referred to individual Portfolio Holders for further action.**

**(6) CAPITAL PROGRAMME MONITORING 2022-23
FSD22083**

The report summarised the current position on capital expenditure and receipts following the second quarter of 2022/23 and sought the Executive's approval to a revised capital programme.

RESOLVED: That, subject to the outcome of discussions later in the agenda, the Executive be recommended to

- 1. Note the report, including a total re-phasing of £134k from 2022/23 into future years, and agree a revised capital programme.**
- 2. Approve the following amendments to the capital programme (paragraph 3.3 of the report)**

- (i) **Increase of £3,000k in relation to the budget for depots**
 - (ii) **Increase of £20,970k for additional costs associated with Project Smith, the preferred option for the existing capital budget for the Civic Centre redevelopment scheme**
- 3. Recommend that Council approve the increase of £23,970k to the capital programme (paragraph 3.3 of the report)**

The Committee agreed to consider the following three items together:

ITEM 7: OPERATIONAL PROPERTY REVIEW, ITEM 8: PROPERTY DISPOSALS, ITEM 9: FUTURE COUNCIL HQ OPTIONS

In opening the discussion, the Chairman complimented the Assistant Director for the quality of the three reports provided. The Chairman hoped that future reports from Officers would maintain the standard.

The Director for Housing, Planning and Regeneration outlined that the three papers before the Committee set out the strategic direction for the Council ensuring that properties were properly managed and maintained in the future. In discussing the reports, Members expressed concerns around the speed with which they were being asked to consider these reports and take significant decisions. Members highlighted that they had had less than 5 days to consider and digest the information in the reports and requested that in future Executive reports to be considered by the Committee be published at the same time as the agenda for the Executive, Resources and Contracts PDS Committee agenda.

In response to a question surrounding how repair works had been prioritised, the Director for Housing, Planning and Regeneration explained that the prioritisation was based on statutory requirements, the state of the properties and how badly the repairs were required.

The Committee then made the following recommendations:

7 OPERATIONAL PROPERTY REVIEW

RESOLVED: That the Executive be recommended to

- 1) Note the contents of the report.**
- 2) Formally adopt the Operational Estate Strategy as detailed at 3.22 to 3.30 within this report.**
- 3) Agree to Officers progressing the various Workstreams identified at 3.34 to 3.43 within the report noting that works packages once scoped and costed will then be reported to the Executive for consideration to proceed and award works packages.**

23 November 2022

- 4) **Agree that the sums identified within the report are incorporated into the Capital Programme.**
- 5) **Agree in principle to the funding of the £3M resources identified at 3.45 to enable Officers to progress the various Workstreams and such funding to made available from the Capital Programme.**

8 PROPERTY DISPOSALS

RESOLVED: that Executive be recommended to note the contents of the Part 1 report and refer the report to Full Council.

9 FUTURE COUNCIL HQ OPTIONS

RESOLVED: That the Executive be recommended to note the Part 1 report.

10 BIGGIN HILL AIRPORT LTD: REQUEST TO VARY USER CLAUSE

BHAL had formally requested their intention to seek to modify the definition of "Permitted User" in clause 1.8 of the Lease, in their letter to the Council dated 24 October 2022. They had requested that the Council approved the modification, but should the Council not decide to approve it then pursuant to their rights under section 84 of the Law of Property Act 1925 ("LPA 1925") they would apply to the Upper Tribunal (Lands Chamber) to determine such a change.

In opening the discussion, a Member noted that the report had been classified as non-urgent, and throughout the report there were references to the need for more information to be provided. Consequently, the Member felt that there needed to be meaningful discussion between landlord and tenant and on that basis the item should be deferred. Another Member noted that non-urgent signified that the report had been published in accordance with the standard publication timetable for Executive, and that owing to the fact that in their letter of 24 October, BHAL had given the Council 28 days to determine their application, the discussion could not be deferred.

The Assistant Director for Property reported that the Council had been notified subsequent to the publication of the report that BHAL now intended to take the matter to the Upper Tribunal and in response to a question the Legal Advisor to the Committee confirmed that in broad terms the legal advice received indicated that the Council had strong grounds to resist challenge.

A Member noted that BHAL had been informed that they had to submit a formal request to vary the user clause. The Member expressed concern that the Council may undermine its case at the Upper Tribunal if it were not seen

to be behaving reasonably and entering into discussions with BHAL prior to taking a decision. The Member noted that it appeared that BHAL had sought to address some of the concerns raised previously and suggested that it would do the Council's legal case no harm to be trying to reach an amicable agreement.

Another Member highlighted that the previous High Court judgement had banned fare paying passengers and Members had to be cautious of agreeing to this request for change which could be seen to be accepting the principle of fare paying passengers and setting a precedent thus undermining the previous High Court decision. The Member also noted that the lease had been set up to protect residents on environmental grounds. The Assistant Director for Property referenced that the Tribunal would be considering the legal merits of the case as opposed to negotiation stances.

It was suggested that often Members had insufficient time to consider the last minute requests submitted by BHAL and the Member requested that when applications were received from the Airport sufficient time was allowed to enable all parties – BHAL and the public (through the Council) – to discuss applications. This would ensure that the public had equal opportunity to make representations. However, it was noted that in their letter of 24 October, BHAL had given the Council 28 days to determine their application. The report was published on the 28th day and Councillors and members of the public had equal notice.

The Chairman proposed an additional recommendation that Executive set aside appropriate funds to fight any tribunal case. The motion was agreed.

The Chairman moved that the Executive be recommended to refuse BHAL's application to amend the Permitted User Clause in the Lease and set aside appropriate funds to fight any tribunal case.

The substantive motion was put to the vote (Cllr Rowlands and Cllr Gabbert were not present):

8 in favour (Cllr Fawthrop requested that his vote in favour be recorded)

0 against

5 abstentions

RESOLVED: That Executive be recommended to refuse BHAL's application to amend the Permitted User Clause in the Lease and set aside appropriate funds to fight any tribunal case.

**11 BROMLEY TOWN CENTRE HEALTH AND WELLBEING CENTRE DEVELOPMENT
PROPOSAL ON BEHALF OF THE NHS BROMLEY ICB
HPR2022/061**

The report provided an update to the Executive, Resources and Contracts PDS Committee and the Executive on the proposal to develop a new Health

23 November 2022

and Wellbeing Centre (HWBC) with the South East London Integrated Care Board (ICB) on the site of the former Adventure Kingdom building and the Great Hall at the Civic Centre. The report also sought authority to enable the Council to continue to work with the ICB and to support them in their proposals for the refurbishment of the Adventure Kingdom as set out in the report.

Mr Mark Cheung, Mark Cheung, One Bromley Programme Director – Integrated Care (ICB) attended the meeting to respond to Member’s questions.

A Member of the Committee who was also a Bromley Town Ward Councillor expressed gratitude for the considerable work that had gone into developing the proposals and reported that the Bromley Town Ward Councillors were wholly supportive of the recommendations to the Executive.

In response to a question, the Senior Development and Programme Manager confirmed that there was no loss of value to the Civic Centre site arising from the proposal. The sale would be at market value and Officers would take all necessary steps to ensure that there was no disadvantage to the Civic Centre site.

RESOLVED: That the Executive be recommended to

- 1. To note the updated proposals for the Health and Wellbeing Centre on the site of the Adventure Kingdom and that previous proposals as approved by the Executive, Resources and Contracts at its meeting on 9th February 2022 will not be proceeding.**
- 2. To provide authority to agree the updated proposals with the ICB for delivery of the project on behalf of the ICB such as design, procurement, terms, management and funding, as set out in sections 3.2 to 3.18 of this report, as necessary to proceed and to approve the intention to continue to work in partnership with the ICB, noting that the ICB continues to provide a cost indemnity for the Council’s costs in respect of the project.**
- 3. To delegate authority to the Director of Housing, Planning, Property and Regeneration in consultation with the Director of Finance, the Director of Corporate Services and the Resources, Commissioning and Contract Management Portfolio Holder, to determine and finalise, as detailed in sections 3.2 to 3.18, all necessary commercial terms, financial arrangements and to deal with publicising, if appropriate, any Open Space Notices and considering representations received and reporting to Members as necessary, and prior to or in conjunction with the proposed report at 2.4 below.**
- 4. To approve proceeding to procurement, via a compliant joint procurement arrangement with the ICB as set out in paragraph 3.12**

to 3.16, for the main works contractor for the refurbishment of the HWBC site at an estimated cost of £6,500,000 (with cost indemnity for the works provided by the ICB). Noting that a formal decision on contract award (and associated contract novations) as set out in paragraphs 3.12 to 3.16 will be presented to Executive in due course prior to the commencement of contract.

5. To delegate authority to the Assistant Director of Legal Services to enter into all relevant legal agreements as detailed in paragraphs 3.12 to 3.16 and any other necessary ancillary legal documentation relating thereto, including (but not limited to):
 - The project agreement;
 - The Section 2 agreement;
 - Agreement for lease and lease; and
 - Option agreement.
6. To note that the ICB programme envisages construction commencement in June 2023 for completion in March 2024 in order to secure funding. Should there be significant delays to the ICB programme then the Council will need to consider whether it should proceed at that time.
7. To note that officers will provide regular updates to Executive, Resources and Contracts PDS Committee on the ICB's progress with the project.

12 IT TRANSFORMATION Report CSD22130

Having declared a pecuniary interest in the item, the Chairman (Councillor Simon Fawthrop) left the meeting and the Vice-Chairman (Councillor Shaun Slator) assumed the Chair for the duration of the item.

The report set out options and recommendations for the Executive to consider on the future of the Council's Data Centre and Disaster Recovery. The report appraised the various technical options as part of the analysis process included the recommended option, risks, benefits and the required changes that were needed to ensure that the Council provided an adequate disaster recovery capability.

The Committee agreed that the approach set out in the report seemed sensible as many businesses and organisations were moving to a cloud-based solution.

In response to questions, the Assistant Director for IT confirmed that there was minimal risk to the Council as the contract would allow sufficient flexibility

23 November 2022

should changes be required at any point. In order to comply with GDPR servers would need to be based in the UK. The Committee also noted that the Council may have some legacy systems that were not compatible with a cloud-based solution, but Officers would look to move all systems over in the next 5 years.

RESOLVED: That the Executive be recommended to

- 1. Note the information and agree to the procurement of the Microsoft's Cloud (Azure) as the Council's Data Center with disaster recovery and increased resilience of the Data Centre for 5 years.**
- 2. Approve an increase in the IT Services revenue budget of £400k to ensure Microsoft Cloud (Azure), Disaster Recovery and Cyber Security functions required are procured and available for the Council. This additional revenue budget requirement represents a forward commitment as part of the 2023/24 and future years budget. There will be part-year costs expected of c. £100k in 2022/23 which will need to be managed from within the existing approved IT Services revenue budget.**
- 3. Agree to the use of the current IT service provider, BT, through the mechanism of the Westminster City Council Pan-London ICT Framework to procure the services detailed in the report. Where in the opinion of the Director of Corporate Services and Governance a separate procurement is required or desirable, agree to delegate authority to this Director in consultation with the Portfolio Holder, to authorise the use of an alternative procurement route in order to proceed to procurement and award the contract.**

(At the conclusion of the item the Chairman rejoined the meeting)

65 POLICY DEVELOPMENT AND OTHER ITEMS

A SECTION 106 AGREEMENTS: UPDATE Report CSD22124

The report provided an update on Section 106 Agreements. In response to a question, the Infrastructure Delivery Team Leader outlined the processes for expenditure of Section 106 funds.

The Committee thanked the Officers for the helpful information provided in the schedules.

RESOLVED: That the report be noted.

66 INFORMATION ITEMS

The item comprised:

- Risk Management

67 LOCAL GOVERNMENT ACT 1972 AS AMENDED BY THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) (VARIATION) ORDER 2006, AND THE FREEDOM OF INFORMATION ACT 2000

RESOLVED that the Press and public be excluded during consideration of the items of business referred to below as it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the Press and public were present there would be disclosure to them of exempt information.

**The following summaries
refer to matters involving exempt information**

68 PRE-DECISION SCRUTINY OF EXEMPT EXECUTIVE REPORTS

The Committee considered the following reports on the Part 2 agenda for the meeting of the Executive on 30 November 2022:

26 CAPITAL PROGRAMME MONITORING 2022/23 PART 2 APPENDIX

The Committee noted the Part 2 (exempt from publication) information provided.

27 OPERATIONAL PROPERTY REVIEW (PART 2)

The Committee considered the report and made recommendations to the Executive.

28 PROPERTY DISPOSALS (PART 2)

The Committee considered the report and made recommendations to the Executive.

29 FUTURE COUNCIL HQ OPTIONS (PART 2)

The Committee considered the report and made recommendations to the Executive.

23 November 2022

29 BIGGIN HILL AIRPORT LTD: REQUEST TO VARY USER CLAUSE (PART 2)

The Committee considered the information in Part 2 and made recommendations to the Executive.

As the time approached 10pm the Chairman advised that the meeting guillotine needed to be invoked and the Committee took the decision not to continue the meeting beyond the 10pm guillotine. Consequently, the following remaining items for consideration were noted:

- Item 5: Matters Outstanding and Work Programme
- Item 6: Forward Plan of Key Decisions
- Item 7c: Insurance Fund Annual Report
- Item 8(5): Budget Monitoring 2022/23
- Item 10a: Risk Management

The Meeting ended at 10.13 pm

Chairman