

Cabinet

Monday, 11 September 2023

7.30 pm

Present:

Cllr John Burden (Chair)
Cllr Shane Mochrie-Cox (Vice-Chair)

Councillors: Emma Morley
Lauren Sullivan
Narinderjit Singh Thandi
Jenny Wallace

Note: Councillors Ejaz Aslam, Daniel Adewale King, Jordan Meade and Karina O'Malley were also in attendance.

Stuart Bobby	Chief Executive
Jamie Izzard	Director (Communities)
Sarah Parfitt	Director (Corporate Services)
Lisa Nyon	Assistant Director (Corporate Services)
Alexandra Jarvis	Principal Accountant (Housing & Exchequer)
Andy Rayfield	Communications Manager
Carlie Simmonds	Committee Services Manager (Minutes)
David Blake	Arlingclose Limited (independent Treasury Advisory firm)

20. Minutes

The minutes of the meeting held on Monday 26 June 2023 were signed by the Chair.

21. Declarations of Interest

Cllr Shane Mochrie-Cox declared an other interest, for information purposes only, in agenda item 9 - General Fund Budget Monitoring Report 2023/24 - Quarter One as he is the Council's representative on Gravesham Community Leisure Limited (GCLL) which is referred to within the report.

22. Delegated Decisions - Cabinet Members

No decisions other than those already circulated had been made.

23. Rosherville Shareholder Advisory Board – Draft Terms of Reference

The Cabinet was reminded that, in February 2023, a report was presented to Full Council to provide the outcomes of the review of the governance structures surrounding the Rosherville commercial entities of the Council.

The review suggested the introduction of a Rosherville Shareholder Advisory Board to ensure that the company can be held to account by the Shareholder (the Council), and introducing regular reporting to the Advisory Board, rather than the ad-hoc reporting that was previously in place. It was agreed that the Advisory Board would be made up of representatives from the political parties making up the Council.

The Cabinet was presented with the draft terms of reference for the Rosherville Shareholder Advisory Board for approval.

Resolved that the draft terms of reference for the Rosherville Shareholder Advisory Board be approved.

24. Future Energy Procurement

The Cabinet was informed that the Council was currently procuring its gas and electricity requirements from LASER Energy Buying Group, an organisation established by Kent County Council (KCC) in 1989 to collaboratively procure energy on behalf of the public sector.

LASER was the Public Buying Organisation (PBO) and KCC was the Contracting Authority and Central Purchasing Body (CPB) for gas and electricity framework contracts operated by LASER.

The Director (Corporate Services) advised that the current contract expired on 30 September 2024 therefore procurement of a new contract needed to start imminently in order to have a new contract in place by 30 September 2023 as both electricity and gas were purchased up to one year in advance.

The report set out the energy procurement strategy that had been set in place when considering procurement options for the Council, alongside the proposed route to procurement to ensure that the Council secures value for money with its preferred provider to meet its energy requirements from October 2024.

The Director (Corporate Services) advised that the best strategy for the current energy procurement activity would be to maintain the direct relationship with the current PBO (LASER).

With over 30 years of public sector expertise, LASER currently procured energy for over 200 public bodies and collectively purchased over £1.5 billion of gas, electricity and water in 2022 on behalf of around 85,000 end users. Due to their size and buying power, LASER were able to leverage favourable pricing by entering into agreements with multiple energy providers. The structure of the Framework also provided the option to switch between suppliers in the event of a supplier failing to deliver their contract commitments or going out of business.

Resolved that

1. the proposed Energy Procurement Strategy for the Council be endorsed; and
2. procurement of the Council's energy requirements from the current Public Buying Organisation (LASER) be agreed and delegated authority be given to the Director (Corporate Services), in consultation with the Monitoring Officer and Head of Property & Regulatory Services, to take all necessary practical, financial and legal actions required to secure the necessary arrangements from October 2024.

25. Learning from Local Government Interventions

The Cabinet was informed that the number of statutory and non-statutory interventions in local authorities by Government had increased during recent years.

Whilst each intervention will be unique in its circumstances, commonalities can be found in the characteristics of the culture and governance at each authority involved.

The report provided an overview of the recent high profile statutory interventions and the lessons that can be taken from each. The intervention case studies were detailed at appendix one of the report for Members' information.

The Department for Levelling Up, Housing and Communities (DLUHC) had also issued guidance for addressing cultural and governance failings in local authorities, which shared lessons from recent interventions and set out a set of indicators of cultural or governance issues.

As a learning authority, the Council had chosen to conduct a self-assessment of its own arrangements against each of those indicators. The self-assessment was presented at appendix two and identified both strengths in current arrangements but also opportunities to further enhance or strengthen governance and culture within the Council. The self-assessment concluded that the Council had many strengths in its organisational culture and governance arrangements, which had been kept under review by both internal and external mechanisms. There were opportunities to build on these strengths and continue to develop and enhance the arrangements the Council had in place. It was proposed that these opportunities were progressed in the next six months, with progress being reported back to the Cabinet as a means of ensuring continuous review and improvement.

It was also recommended that the report be considered at the next Finance & Audit Committee due to that Committee being established to provide independent assurance and oversight of the Council's governance arrangements.

The Cabinet noted that it had recently been reported that a number of local authorities could be close to issuing a section 114 notice in the next two financial years. Therefore, it was important for the Council to acknowledge this danger and the need to take necessary action to deliver base budget reductions.

The Cabinet also acknowledged the lack of central government funding and the need for the government to recognise the inflationary pressure and the increase in demand for services that local authorities were now facing. The Leader advised that there had been positive cross-party support in Kent in lobbying the government for additional funding.

The Leader also highlighted that, as a learning authority, the Council had actively welcomed the Local Government Association's Peer Challenge which involves a team of experienced officers and Members spending time with the Council as 'peers' to provide challenge and share learning.

Resolved that

1. that the report be considered at the next Finance & Audit Committee as the Committee established to provide independent assurance and oversight of the Council's governance arrangements; and
2. the self-assessment at Appendix Two to the report be endorsed and a progress report be presented to the Cabinet in six months' time.

26. General Fund Budget Monitoring Report 2023/24 - Quarter One

The Cabinet received the first budget monitoring report for 2023/24 in relation to the General Fund showing the position up to 30 June 2023. The Cabinet noted the information provided on: -

- actual performance against the approved Revenue and Capital budgets for 2023/24, including projected variances agreed or identified through budgetary control activity; and
- other key areas of financial performance that may impact on the Council's Medium Term Financial Strategy (MTFS), Medium Term Financial Plan (MTFP), or Financial Statements.

The Assistant Director (Corporate Services) drew Members' attention to page 48 which held an executive summary of the report.

As reported in the 2022/23 Provisional Outturn Report, the Council ended the previous year with a budget shortfall of £673k. As at quarter one, there was a forecast overspend of £917k, the key variances being Leisure Services and Temporary Accommodation. Section 3.8 of the report detailed the wider unbudgeted risks to the MTFP.

Members were also informed that the Council was now required to report on its treasury management indicators as detailed at section 6 of the report.

The MTFP showed a projected shortfall of circa £1m in 2024/25 then circa £4m thereafter. This was an improved position since budget setting due to the Council taking proactive action to respond to the financial challenges it was facing, as directed by the MTFS.

The Assistant Director (Corporate Services) confirmed that the Council will continue to operate robust budgetary control actions to ensure good financial governance and respond to the pressures on the Council's finances. In addition to the regular budget monitoring reports, the following action was also being taken:-

- all financial decisions and major acquisitions being brought to Management Team for discussion and approval;
- appropriate controls in approving purchase orders;

- recruitment activity which impacts on either budgetary provision or results in a permanent change to the staffing establishment being considered and approved by Management Team; and
- monitoring the delivery of activity under the MTFS.

The report will also be considered by the Finance and Audit Committee on 19 September 2023.

The Cabinet noted the projected overspend and the key variances being Leisure Services and Temporary Accommodation. It was hoped that there would start to be a downward movement in both areas; a reduction in heating costs in relation to the Leisure Centres and the creation of the Social Lettings Agency in relation to Temporary Accommodation.

Cllr Shane Mochrie-Cox, as the Council's representative on GCLL, advised that there had been a positive increase in usage, membership etc. at the Leisure Centres which were returning to pre-COVID levels.

The Cabinet noted the information contained within the report.

27. Housing Revenue Account Budget Monitoring Report - Quarter One 2023/24

The Cabinet received the first budget monitoring report for 2023/24 in relation to the Housing Revenue Account showing the position up to 30 June 2023. The Cabinet noted the information provided on:-

- actual performance against the approved Revenue and Capital budgets for 2023/24, including known variances agreed or identified through budgetary control activity; and
- other key areas of financial performance that may affect the Council's Medium Term Financial Strategy, Medium Term Financial Plan, HRA Business Plan or Financial Statements.

The Principal Accountant (Housing & Exchequer) drew Members' attention to page 66 which held an executive summary of the report.

As at quarter one, there was a forecast overspend of £722k, the key variances being the increased costs of borrowing reflected in the capital finance budget and an adverse variance on repairs and maintenance contractor costs.

The Principal Accountant (Housing & Exchequer) confirmed that the same robust budgetary control actions as detailed in the previous minute (minute 26 - General Fund Budget Monitoring Report 2023/24 - Quarter One) were also being applied to the Housing Revenue Account and that the report would also be considered by the Finance and Audit Committee on 19 September 2023.

The Cabinet noted the information contained within the report.

28. Interests in land and assets belonging to the council

The Cabinet noted the report contained within Part A of the agenda and agreed to move into Part B so that the report, including exempt information, could be considered and discussed in more detailed.

29. Exclusion

Resolved that pursuant to Section 100A(4) of the Local Government Act 1972 that the public be excluded during the following item of business because it was likely in view of the nature of business to be transacted that, if members of the public were present during this item, there would be disclosure to them of exempt information.

30. Interests in land and assets belonging to the council

The Cabinet was reminded that in 2004, the Council embarked on a project in conjunction with Edinburgh House Estates Limited to redevelop what was then referred to as the Heritage Quarter, an area in Gravesend Town Centre encompassing St George's Shopping Centre, the area north of the Shopping Centre and the area north of Gravesend Market.

Redevelopment in the following 13 years was not forthcoming.

In 2017, Edinburgh House decided to market their interest in the development opportunity.

In late 2017, Reef Estates Limited expressed an interest in the development opportunity and in working with the Council to stimulate wider regeneration of Gravesend Town Centre.

Following initial discussions, due diligence was undertaken to assess the interest that was being presented, which included securing legal opinion from Trowers & Hamlin, property advice from Jones Lang LaSalle and treasury and accounting advice from Link and engaging in discussions with the Council's audit firm at the time, Grant Thornton.

In 2018, the Cabinet and the Overview Scrutiny Committee was provided with information relating to the proposals from Reef Estates Limited regarding the development of the Heritage Quarter, including the St George's Shopping Centre. These reports were supported by presentations from Reef Estates on their proposal. The report set out the view that the proposal, in the round, would deliver economic and social benefits to Gravesend Town Centre given the strategic position of the St George's Shopping Centre and the ability of the Agreement to act as a major catalyst to much-needed wider town centre regeneration.

Following consideration of the proposals by the Cabinet and the Overview Scrutiny Committee, it was agreed that the Council would terminate the development agreement with Queenridge Properties Ltd/Edinburgh House and enter into legal agreements with Reef Estates Limited and Aviva Investors relating to the St George's Shopping Centre. At the same time, the Council entered into an Exclusivity Agreement with Reef Estates Limited to bring forward residential and commercial development proposals for land formerly known as the Eastern and Western Quarters of Gravesend Town Centre.

The Agreement for the St George's Shopping Centre followed the form of an income strip structure. This was effectively a forward-funding structure whereby the investor (Aviva Investors) enabled the developer (Reef Estates) to acquire the interest in the Shopping Centre from Queenridge Properties Ltd/Edinburgh House Estates Limited, with further funding provided by Aviva Investors to deliver the proposed reinvigoration of the St Georges Shopping Centre.

As reported to Members in the General Fund Provisional Outturn Report 2021/22 and the 2018/19 Statement of Accounts, the St Georges Shopping Centre Arrangement was treated as a finance lease, following assessment of the accounting treatment required. This included discussions, prior to entering into the agreement, with representatives for the Council's auditor, Grant Thornton. This treatment was accepted and confirmed by Grant Thornton in the 2018/19 Statement of Accounts.

A new audit team from Grant Thornton was appointed to audit the Council's 2019/20 financial statements and, during the audit process, the auditors requested that the Council reconsidered the accounting treatment being applied for the St Georges Shopping Centre transaction, indicating that the treatment for the transaction should be that of a loan agreement and also challenged the implicit interest rate applied.

The Council sought advice from various sources to ascertain which accounting treatment should be applied for the transaction. Advice was sought from CIPFA, Link (the Council's treasury management advisors) and a technical expert in Local Government Accounting. All concurred with the view of Grant Thornton that the transaction should be treated as a loan, and that additional interest costs derived from the implicit interest rate within the arrangement should be reflected within the Council's General Fund balance.

Given the financial and accounting implications that had emerged, the Council approached Aviva Investors to begin discussion on termination of the arrangement. Aviva Investors responded openly to the Council's request and following a period of negotiation with Aviva Investors during which the Council were assisted by Reef Estates and Jones Lang LaSalle, consensus was obtained from all parties to end the legal agreement and remove the lease arrangement between the Council and Aviva Investors.

To end this arrangement, the Council will be required to make a capital payment to Aviva Investors in the form of a surrender premium, effectively replacing the finance lease with external borrowing. The value of this sum would be intended to represent the 'make-whole' position of the deal, taking into account that Aviva Investors were unlikely to be able to replace the income stream for its investors with liquid assets (i.e., gilts) and the likely time that will be taken to reallocate their investment in what was currently a challenging market.

In return, Aviva Investors will surrender the headlease and bring to an end the operational underlease agreement with the Council. The Council would then have an unencumbered interest in the St George's Shopping Centre, giving the Council full control over its future operation.

As the Council has a responsibility to ensure it is securing economy, efficiency and effectiveness in deploying the resources it has available to it, the Council engaged ArlingClose, an independent Treasury Advisory firm, to provide specialist advice in reviewing the proposed termination methodology and the valuation calculation used to inform the surrender premium valuation. The review identified opportunities to negotiate on some of the elements used in the methodology to the benefit of the Council therefore ArlingClose were engaged to act on behalf of the Council to negotiate a revised settlement sum and agree the final valuation methodology to calculate the surrender premium to be paid.

A report on the final valuation methodology had been produced and included within the report. It set out the view of ArlingClose that the final valuation methodology agreed provided a fair valuation for the Council.

The Director (Corporate Services) advised that financial cashflow modelling including sensitivity analysis had been conducted by the technical accounting expert engaged by the Council as well as the Council's Finance Team. The finance and value for money implications together with the Legal and Taxation Implications; Accounting impact – MRP and statement of accounts; Treasury Considerations and Property Management Implications had all been detailed within the report for Member's consideration.

Advice on alternative options for structuring the required loan debt had also been sought from ArlingClose. The final advice report had not been received from ArlingClose by the time of publication of the report but a Members' Briefing Note would be prepared by ArlingClose and shared with Members once available. This and the final advice report will be used to inform the final approach to structuring the loan requirement. Members were informed that the final loan structure will be impacted by prevailing interest rates at the time of surrender and at the points of refinancing during the duration of the loan requirement.

In coming to a decision, Members were requested to consider the information detailed within the report and to also take into consideration the nonfinancial benefits that would be derived from unencumbered freehold of the St Georges Shopping Centre which would provide greater opportunity for the Council to manage and consider the future purpose of the shopping centre without being constrained by any requirements of Aviva as Investor. It would also make it legally easier to adjust, modify or repurpose the centre and the area to the rear as identified in the current St George's Square proposals as all the land holdings would be within the direct ownership of the Council.

The Director (Corporate Services) informed Members that Mr David Blake from ArlingClose was in attendance and would be happy to answer any questions that Members may have.

The Cabinet noted the information contained within the report, including the financial information, that needed to remain confidential at this stage.

Questions from Cabinet Members were put to and answered by officers and Mr David Blake.

The Cabinet expressed its disappointment with Grant Thornton change of opinion regarding the accounting treatment and sought reassurance that the proposed accounting treatment was now the best way forward for the Council.

The Cabinet was informed that expert advice had been sought and the Council had been advised that the proposals set out in the report/recommendations would be the best way forward for the Council. The proposed accounting treatment had also been shared with Grant Thornton who had accepted it 'in principle'.

The Cabinet was informed that the current accounting treatment was a complex transaction however the proposed accounting treatment would be much simpler and would mirror similar transactions that had been taken at a number of other local authorities.

The Cabinet noted that, if it was to approve the recommendations, then all the land holdings would be within the direct ownership of the Council and requested a valuation. Officers advised that they would explore this further and update Members outside of the meeting.

Resolved that:

1. the Council enter into the necessary legal agreements to give effect to the removal of the leasing structure currently in place with Aviva Investors relating to the St Georges Shopping Centre and replace this with external borrowing;
2. delegated authority be granted to the Director (Corporate Services) (in the role of S151 officer) in consultation with the Leader of the Executive, Chief Executive and Monitoring Officer, and in conjunction with the Council's Property, Finance and Legal teams, to take all necessary practical, financial, and legal actions required; and
3. the Cabinet noted the need to take on additional borrowing will see external debt exceed the CFR in the short term. In response to this the Council will review its capital investment plans.

The Leader thanked Mr David Blake for attending the meeting and answering Members questions.

31. Minutes of meeting of Rosherville Shareholder Advisory Board

The Cabinet noted the minutes of the Rosherville Shareholder Advisory Board held on Wednesday 2 August 2023.

Close of meeting

The meeting ended at 8.49pm.