

Decisions of the Budget and Performance Overview and Scrutiny Committee

11 June 2013

Members Present:-

Councillor Anthony Finn (Chairman)

Councillor Brian Gordon
Councillor Ross Houston
Councillor John Marshall
Councillor Arjun Mitra

Councillor Alison Moore
Councillor Hugh Rayner
Councillor Alan Schneiderman
Councillor Andrew Strongolou (In place of Andrew Harper)

Also in attendance

Councillor Dean Cohen – Cabinet Member for Environment
Councillor Richard Cornelius – Leader of the Council
Councillor David Longstaff – Cabinet Member for Safety and Resident Engagement
Councillor Robert Rams – Cabinet Member for Customer Access and Partnerships

Apologies for Absence

Councillor Joan Scannell

Councillor Andrew Harper

1. MINUTES OF THE PREVIOUS MEETING

RESOLVED that the minutes of the meetings held on the 24 February 2013 and 7 March 2013 be approved as a correct record.

2. ABSENCE OF MEMBERS

Apologies for absence had been received from:

- Councillor Scannell; and
- Councillor Harper (who was substituted for by Councillor Strongolou)

3. DECLARATION OF MEMBERS' INTERESTS

Member	Subject	Interest declared
Councillor Ross Houston	Agenda Item 6 (Development and Regulatory Services)	Non-pecuniary interest as a Council appointed representative on the Board of The Barnet Group Ltd
Councillor John Marshall	Agenda Item 6 (Development and Regulatory Services)	Non-pecuniary interest as a Council appointed representative on the Board of The Barnet Group Ltd

4. PUBLIC QUESTION TIME

Details of the questions asked of, and the answers given by the Chairman, were circulated at the meeting, made available to the public questioners in advance of the meeting and published online with the agenda papers for the meeting. Verbal responses were given to supplementary questions asked at the meeting.

Officers undertook to provide written responses to the following supplementary questions asked at the meeting:

Supplementary to question 46 from Mr Ron Cohen

With reference to statement that “For dividend payments the amount of dividends differs for different classes of sales”, can you please provide more details on classes and the difference for each class?

Supplementary to question 7 from Mr John Dix – surely the pre-purchasing of graves should be counted as an accrual and not a revenue stream otherwise the Council could find itself in the situation of having to service graves after contract has finished.

5. MEMBERS' ITEMS (SUBMITTED IN ACCORDANCE WITH OVERVIEW AND SCRUTINY PROCEDURE RULE 9) (IF ANY)

None.

During consideration of the item below, Councillor Strongolou entered the meeting at 7.40pm.

6. DEVELOPMENT AND REGULATORY SERVICES: RECOMMENDATION FOR PREFERRED AND RESERVED BIDDER AND FULL BUSINESS CASE

The Committee received public comments from Mr Julian Silverman, Mr John Dix and Mr Daniel Hope.

The Director for Place, Pam Wharfe, and the Commercial Director, Craig Cooper, delivered a presentation which: outlined the national context; provided detail on the Development and Regulatory Services (DRS) project (including financial benefits, service benefits and standards, service improvement proposals and staff impacts); detailed commercial aspects (including contractual arrangements and the joint venture); and informed the Committee of the decision making timeline. Copies of the presentation were circulated at the meeting and were made available with the agenda papers for the meeting on the council's website.

A Member questioned what action would be taken to mitigate against residents with protected characteristics being able to access web based services. The Leader of the Council advised the Committee that a comprehensive Equalities Impact Assessment (EIA) had been completed to support the proposed decision. The Member expressed concern that there was no evidence in the EIA to specify what mitigating steps would be taken during the lifetime of the contract. Officers informed the Committee that there were service commitments to equalities in the contract, adding that move towards more web based services would free up resources for providing the DRS face to face service which was a contractual commitment.

The Committee questioned whether the proposals would impact users of the Hendon Cemetery and Crematorium services. Officers reported that transferring this service to the joint venture would lead to investment in facilities and overall service improvements as the contractor had committed to achieving the gold standard for cemeteries, an improvement from the current bronze standard.

The Committee noted that Scheduled 37 of the proposed contract enabled the Council to veto certain schemes proposed by Capita Symonds. Officers clarified that even though elected Members would have the ability to veto schemes which potentially generated profits for the joint venture, Capita Symonds had provided a guaranteed level of profit per annum.

Members highlighted that a number of statutory services were included in the DRS service bundle and questioned how the joint venture would respond to legislative changes which required a reconfiguration of services and what the cost implications would be. Officers reported that for services in scope, the joint venture would provide these. Any contractual changes would be subject to a best value review and the Council would have the ability review and challenge any proposed contractual variations arising as a result of new legislation.

A Member noted that the borough was expected to experience demographic increases and changes in local economic circumstances over the lifetime of the contract and questioned how tightly the council were bound by volumes of service. Officers advised that the sensitivity analysis (page 41, Appendix 1) highlighted that there would not be a change in price until there was a 10% increase or decrease in service levels. It was emphasised that the price changes would only impact on the sub-set of services detailed in the sensitivity analysis and that if prices were increased, that would be beneficial to the joint venture and ultimately the Council.

A Member of the Committee commented that the savings delivered by the proposal would mean that there would be additional resources available for front-line services in future years, adding that elected Members would have more and better quality data on which to base future decisions. Officers advised the Committee that the services included in the bundle of DRS services currently cost £4.5 million per annum which would reduce to £600K.

The Committee sought clarification regarding the possible imposition of new charges for services and increases in existing charges. Officers reported that there were no proposals to introduce new charges. It was noted that existing charges for services may be increased, but that decision making on these increases would be the responsibility of elected Members as was currently the case. Members were advised that the joint venture would provide a level of flexibility around staffing which would enable additional work, such as parking reviews, to be completed without the Council having to recruit new staff. The Committee noted that profits from trading out of borough were expected to deliver increased income.

Officers advised the Committee that the Barnet Observatory was a joint project between Capita and Middlesex University to provide borough wide data which would assist in targeting services and making better informed decisions.

A Member questioned whether the quality of core services provided in Barnet would be impacted by the requirement to provide services out of borough as part of the joint venture business case. Officers advised the Committee that the joint venture would have

the ability to develop services, such as building control, beyond the limitations and constraints of the services currently provided in-house. This would place them in a better position to trade outside of the borough.

Members expressed concern that the services in Barnet might be affected by the joint venture putting the best staff in areas where they were seeking to generate new business. The Leader of the Council advised the Committee that there were contractual safeguards in place to ensure service levels, adding that it would be contrary to the best interests of Capita Symonds to provide a poor service in their host borough.

The Committee noted that the Council were only able to recover 10% of Capita Symonds fee for poor performance. Officers advised the Committee that it was usual practice for contractors to forego their profits for failing to performance against KPIs and that 10% was substantially more than the industry standard. It was reported that there were penalties for failing to adhere to KPI's and that the Council had the ability to 'step-in' to take control of services. All costs associated with any step-in arrangements would be recharged to Capita Symonds. If the services had to be re-produced as a result of the step-in, procurement costs would be charged to Capita Symonds.

Members welcomed that the Council had the ability to step-in and take individual services back in-house. However, it was noted that there was a possibility of multiple services requiring intervention and questioned at what point the Council would take a decision to exit from the joint venture. It was questioned whether this had been written into the risk assessment for the project. Officers undertook to provide a written response to the Committee on this point.

Officers advised the Committee that even if the joint venture was terminated, Capita Symonds would still be required to pay the Council £2.9million of income per annum as set out in the formula guarantee. It was emphasised that the Capita Symonds would be working in partnership with the Council to expand the business outside of the borough and seek to exploit market across the South East to deliver income growth.

Members suggested that there may be pressure on the Cabinet (or in future, committee chairmen) to increase fees and charges to make the joint venture more viable. It was noted that increased fees and charges would impact on service users rather than residents. Officers added that when decisions were taken to increases fees and charges, an EIA was carried out to support these decisions.

A Member highlighted that Table 9.5 (Summary Risk Analysis) had identified that 27 KPIs had not been accepted as being reliable by the provider. Officers advised the Committee that the Council were in the process of base-lining each to ensure that they were robust and advised Members that all KPIs would be agreed before the contract was signed. Responding to a question, Officers confirmed that new KPIs could be added during the contract lifetime to respond to changing circumstances.

The Committee sought clarification on the provisions of Schedule 37 in the contract. Officers advised that it contained a schedule of commitments, some of which were contractual and some of which were aspirational. Schedule 37 detailed all commitments throughout the lifetime of the contact; this information would enable the Executive, Overview and Scrutiny Committees, the Commercial Team and Lead Commissioners to understand commitments and progress against these.

A Member of the Committee referred to financial flows detailed in information provided to Members. It was noted that some money was classified as guaranteed income and some as joint venture profit. How profits would be distributed would be defined by the joint venture agreement.

It was noted that the contract also included a list of proposals which could be taken forward to expand the business. The Committee questioned how these had been derived. Officers reported that the possible schemes detailed commercial activities that could be delivered by the joint venture both within and outside of Barnet. Whilst Capita had specified benefits of £39.1million pounds and an element of this would come from business expansion. The total value of the schemes contained in the schedule was up to £177million. It was noted that some schemes may not be progressed because they might not be agreed by Members.

Responding to a question relating to the joint venture providing statutory services and how the provision of these services could be maintained in the event of service failure, Officers reported that for some services (such as Environmental Health) there was an existing market which meant that these services would be not be difficult re-commission quickly.

Members sought assurance about the financial capacity of the parent company and questioned whether there was any limit on liability. Officers advised the Committee that the Council could step-in if there were concerns about the financial standing of the parent company. It was noted that there were limits on liability and these mainly related to the cost of re-procuring services (e.g. if the Council were close to end of the contract, the re-procurement costs would be lower). Officers added that Capita were FTSE 100 listed company and had to provide guarantees to Financial Services Authority. They were also contractually obliged to inform the Council in the event of financial distress.

The Committee noted that there were contract review points built in at years four and seven. It was questioned what the impact on service delivery would be if at year seven the Council indicated that they were seeking to withdraw from the joint venture. Officers emphasised that if Capita Symonds began to withdraw services at the later stages of the contract this would cause reputational damage and would be detrimental to their future business interests. It was highlighted that effective contract management was fundamental and that there would be continual monitoring via the Commercial Team, Council Directors, Executive and Contract Monitoring Overview and Scrutiny Committee.

A Member highlighted that approximately 30% of employees in the joint venture would be employed on joint employment contracts. It was noted that the Council had managed to identify a workaround to ensure that statutory functions could be delivered by the joint venture. There were, however, concerns that this was against the spirit of the legislation which required the Council to deliver these functions and that there could be possible commercial conflicts of interest with a private company delivering quasi-judicial functions. Officers reported that Schedule 27 of the contract dealt with conflicts of interests and would be sufficient to address this.

It was noted that the joint employment contracts would be administered by the joint venture. Officers were requested to provide details of where joint employment contracts had been used in other areas.

Responding to a question regarding the abolition of the Council, Officers advised the Committee that should the Council ceased to exist, all assets and liabilities would transfer to a new authority.

In relation to democratic accountability and control, a Member highlighted that contractual performance would be subject to scrutiny at the Contract Monitoring Overview and Scrutiny Committee. It was noted that decisions relating to fees and charges would be made by elected Members. Officers confirmed that external Delivery Units would be required to attend committee to give account to Members when circumstances required. It was noted that there would also be a DRS Member Liaison Officer who would assist elected Members and provide links to enhanced ward based data.

A Member referred to the statement by the Leader of the Council made in September 2012 that he was not aware that it was proposed to deliver the DRS cluster of services via a joint venture and questioned how this had emerged as the preferred option. The Leader informed the Committee that, after discussion with officers and in light of additional information, he had reconsidered his position. He emphasised that the decision was primarily based on the guaranteed savings offered by Capita Symonds, rather than the income growth proposals.

A Member highlighted that elected Members set the policy direction of the Council and it was the responsibility of the Officers to develop options and implement the decisions of Members.

Councillor Schneiderman MOVED that the meeting be extend until 10.30pm. The Chairman reported that there was no constitutional provision which enabled this to take place.

At the request of Councillor Moore, the Leader of the Council provided assurance to the Committee that the contract would not be signed until the outcome of the judicial review appeal process was known.

A Member highlighted that there had been a previous request for the Committee to receive specialist external advice to assist them in their role scrutinising the DRS decision and that this had not been progressed, despite there being adequate time for this.

Councillor Moore MOVED that a formal consultation process should take place with residents in advance of the contract being signed. This proposal was duly seconded. Upon being put to the vote, the proposal was lost.

Councillor Marshall MOVED that the Committee endorse the proposals to Cabinet due to the benefits to residents. This proposal was duly seconded. Upon being put to the vote, the proposal was won.

Councillor Mitra MOVED that the decision be deferred to enable a full in-house bid to developed and assessed. This proposal was duly seconded. Upon being put to the vote, the proposal was lost.

RESOLVED that:

- 1. the Committee endorse the proposals as set out in Annex 1 (Development and Regulatory Services: Recommendation for Preferred and Reserve Bidder and Full Business Case) for adoption by Cabinet.**
- 2. Officers provide a written response to the Committee regarding the stage at which the Council would exit from the Joint Venture due to multiple services requiring step-in arrangements to be invoked.**
- 3. Officers be requested to provide details of other areas where statutory service had been delivered by joint employment contacts.**

7. BUDGET AND PERFORMANCE OVERVIEW AND SCRUTINY COMMITTEE FORWARD WORK PROGRAMME

The Committee noted the Forward Work Programme.

8. ANY OTHER ITEMS THE CHAIRMAN DECIDES ARE URGENT

None.

9. MOTION TO EXCLUDE THE PRESS AND PUBLIC

RESOLVED that under Section 100A (4) of the Local Government Act 1972 the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 9 of part 1 of Schedule 12A of the Act (as amended).

10. DEVELOPMENT AND REGULATORY SERVICES: RECOMMENDATION FOR PREFERRED AND RESERVED BIDDER AND FULL BUSINESS CASE

RESOLVED that the exempt information that relates to the item for consideration at the meeting in public session be noted.

11. ANY OTHER EXEMPT ITEMS THE CHAIRMAN DECIDES ARE URGENT

None.

The meeting finished at 10.00 pm