

GOVERNANCE AND AUDIT COMMITTEE

23 November 2021

Present:- Councillor Kevin Bentley, Councillor Michelle Burrows, Councillor Adam Fox, Councillor Chris Hayter, Councillor David King, Councillor Steph Nissen, Councillor Leigh Tate, Councillor Dennis Willetts (Chairman)

Substitutions:

Also Present:-

285. Minutes of the previous meeting

RESOLVED that: the minutes of the meeting held on 19 October 2021 be confirmed as a correct record.

286. Treasury Management Strategy – Mid Year Review 2021/2022

Mark Jarvis, Finance Manager, attended the meeting to present the report and assist the Committee with its enquires. The Committee heard that this report was the second report in a cycle, with the first having been the Treasury Management Strategy which had been agreed at Full Council in February. Although local authority borrowing had gradually increased over previous financial years, there had been a reduction in the amount of borrowing which had taken place this year due to the impact of the global pandemic and the significant amount of funding which had been provided to local authorities from central government as a result of this. There had been an increase in Colchester Borough Council's (the Council) short term investment due to this additional funding and the economic slowdown. It was predicted that there would be a rise in interest rates in February 2022, from 0.1% to 0.25%, however, the Council's loans were not affected by changes in the base rate or by changes in the Consumer Price Index or Retail Price Index, as the loans were fixed.

With regard to capital expenditure, the Committee were advised that the position nationally had slowed down the Capital Programme which was significant for treasury management purposes as it meant that there had not been the same need to borrow money to the extent that had been predicted. This effect was more pronounced with regard to the General Fund, as the Housing Revenue Account had been affected to a lesser degree as property prices had not been severely affected.

The Council's investment portfolio had increased and had £79.5m of investments as at 30 September 2021, compared to £58m at 30 September 2020. All of the investments were short term and would be payable in the current financial year. No additional borrowing had taken place during 2021/2022 given the Council's strong financial position, and it was intended to continue to borrow internally to reduce the cost of borrowing.

In response to an enquiry from Councillor King, Mark Jarvis explained that the Council's Operation Limit was the amount of money that the Council could borrow up to, however the Council was currently in an under-borrowed position of £52m and was showing a small surplus in the revenue budget. This surplus was considered to be a 'one off' event which would equalise over the forthcoming years.

Councillor Bentley noted that the Council had declared a Climate Change Emergency, and requested assurance that in the light of this, none of the Council's investments were detrimental to the environment. He further enquired what the investments that had been made into other local authorities had been in relation to. Mark explained that although there were opportunities to invest in green funds, the Council was limited in terms of how it could diversify its' portfolio of investments, which was one of the main objectives of the Treasury Management Strategy, to ensure that Council funds were secure. In order to diversify the Council's portfolio, investment had been made in other local authorities which were considered to be safe, and it would not be known what the requested funds would be used for. The Council's brokers undertook due diligence work prior to lending money to other local authorities, however the Committee were assured that local authorities were generally considered to be one of the safest forms of investment. In the rare cases where there may be some concern about lending to a local authority, the position would be discussed with the Council's Treasury Advisors and brokers.

Councillor Willetts noted that there were two facets to green investment; the act of seeking out and making environmentally friendly investments, and actively avoiding making investments in areas or companies which were not environmentally friendly. He sought clarification on how the Council ensured that it did not invest in areas where there were environmental issues. It was clarified to the Committee that the Council did not invest in any equities or properties, and only invested in banks, building societies or other local authorities.

It was clarified to the Committee that a Lender Option Borrower Option (LOBO), which was referred to in the Officer's report, was a type of loan where the interest rate was determined by the bank or the institute that had been borrowed from, and this rate was subject to variance every six months. The Council then had the option to accept the new interest rate or repay the loan.

With regard to the loan to Colchester Commercial Holdings Limited (CCHL), the Committee were advised that the loan which was detailed in the Officer's report of £26.6m was in relation to development being undertaken at Mill Road. The surety for this loan had already been picked up by the Council's auditors and had been highlighted in the previous year's Audit Report, and Officers took steps to appraise the financial statement of CCHL to ensure that any loan was secure. Given the

Council's current strong cash position, it may be the case that when the loan was requested, additional borrowing to fund this may not be needed and loans would not be taken out until necessary.

Councillor Willetts noted that the Council was well within its borrowing limits, and considered that the technical questions which had been posed by the Committee had been answered well.

RESOLVED that: the Treasury Mid-Year report be approved.

287. Financial Monitoring Report – April to September 2021

Mark Jarvis, Finance Manager, attended the meeting to present the report and assist the Committee with its enquires. The Committee heard that the General Fund was showing a net underspend against services of £1.4m as at period 6 against the profiled budget, and the current forecast outturn position for the General Fund was a net underspend of £799,000, assuming the agreed use of reserves of £2.4m contained in the budget. The Housing Revenue Account was showing a net underspend of £371,000 in period 6, however it was forecast that this would be on budget at year end.

With regard to service budgets, a net forecast overspend of £144,000 was shown, with a number of areas of the Council contributing to this. The Committee was advised that the 2021/2022 budget had included an initial estimate of £500,000 for Sales, Fees and Charges income support from the Government for Quarter 1, however, based on the actual Quarter 1 return £920,000 had been claimed which meant that additional income support of £420,000 would be required.

The attention of the Committee was drawn to information which had been provided in the Officer's report in response to a request that had been made at its previous meeting, which provided a detailed breakdown of the income received from the Government under the Sales, Fees and Charges income loss support scheme.

Councillor Willetts acknowledged that it was a difficult time to be accurate with financial predictions given the ongoing effect on income that the uncertainty following the global pandemic had caused, however, he considered that the Council was in a relatively strong position considering the predicted net underspend and the financial assistance which had been provided by central government.

Councillor King noted that some of the challenges to the Council's income which had been referenced in the Officer's report were not new in nature, and sought assurances that the Council would be in a position to respond to these challenges, particularly with regard to staffing issues. He further sought clarity in relation to the listed item under Bereavement Services and child burial cost income.

Dan Gascoyne, Chief Operating Officer, assured the Committee that the issues were being monitored very closely, noting that vacancies in Neighbourhood Services provided a harder target to meet as this was not a service where the Council could afford to have front line staff missing. The Council had, however, been successful in

recent recruitment campaigns and had been able to employ qualified drivers despite there being a national shortage of skilled workers in this position. The Council was making progress in reducing the use of short-term casual staff. Councillor Willetts noted that the Vacancy Factor Target (VFT) had caused some concerns when setting previous budgets, and wondered how a realistic VFT was set. Mark Jarvis confirmed that every Council service had to set its budget, and part of this was the VFT which was assessed each year.

Councillor Willetts considered that the report had been clearly presented, and the questions of the Committee had been fully answered.

RESOLVED that:

- the financial performance of General Fund Services and the Housing Revenue Account (HRA) for the first six months of 2021/22 had been considered;
- the forecast budget underspend of £799k on the General Fund necessitating less reserves being used to deliver an on-budget year-end position than originally assumed be noted.

288. Capital Monitoring Report Quarter 2 – 2021/2022

Mark Jarvis, Finance Manager, attended the meeting to present the report and assist the Committee with its enquires. The Committee heard that Colchester Borough Council's (the Council) current Capital Programme stood at £121m, with a total forecast programme of £66m in the current financial year. To date, capital expenditure had only been £16.6m, approximately one quarter of the intended target, however, this was in line with the expenditure that had been made in previous years. The attention of the Committee was drawn to the information which had been supplied in the appendix to the Officer's report, which detailed each of the Council's schemes and risk rated these using a Red, Amber, Green (RAG) rating system. Here were currently two red rated schemes, and twenty three amber rated schemes. The global pandemic had caused issues with supply and there had been increases in the cost of tenders which had created a number of issues. The two schemes that were red rated were of relatively low value.

Councillor Fox questioned one of the major variances on capital expenditure which was the lending to Colchester Commercial Holdings Limited (CCHL) of £26.6m in respect of the Mill Road site, and he asked for an explanation of what had caused the delays, and why the schemes had a green RAG rating as opposed to amber or red. Mark Jarvis confirmed that there had been delays in the scheme caused by the need to obtain planning permission, and that money would not be lent to CCHL until work had started. Although there had been delays to the scheme, these had been between six to nine months, which from a credit management perspective did not generate significant enough concern to RAG rate the scheme as amber. Councillor Fox considered that greater clarity would be appropriate surrounding what the

money was being loaned to CCHL for, and it was agreed that although the Council's subsidiary companies were delivering the project on the behalf of the Council itself that clearer, more specific, wording would be considered in the future when describing the loan.

Councillor Fox identified that St Mark's Community Centre was another project for which additional funding would be requested, and he enquired how much this would be, and when it would be requested. It was confirmed to the Committee that the overspend was currently estimated to be in the region of £300,000, and additional information would be provided to Cabinet and Scrutiny Panel in January 2022.

Councillor Bentley noted that a number of the projects were subject to delays and sought assurance that the costs associated with any delays, together with the impact of rising inflation had been included in any calculations to determine the true costs associated with any scheme. It was confirmed that any additional overspend or other increases due to inflation or the cost of materials would be considered by Cabinet in January when the capital budget was set. The information presented to Cabinet could be referenced in the Quarter 3 Capital Monitoring report that would be presented to this Committee.

Councillor King considered that the Council was not good at estimating the cause for spend, and although the very difficult current context was noted, he considered that there was an opportunity to look clearly at the progress of projects during the forthcoming year's capital programme reset to ensure that the overspending of previous years was avoided if possible. It was confirmed to the Committee that every service was given the opportunity to recalculate ongoing project costs, and the finance team discussed every project with Projects Managers in detail, offering support where necessary, with the aim of mitigating against unforeseen expense.

Councillor Burrows noted that the report contained information suggesting that the Council had allocated child burial costs as a new source of income, and she wondered whether there was a precedent for these charges across other local authorities. Councillor Hayter believed that the costs referred to a central government fund against which the burial costs could be claimed, and did not relate to the charging of grieving families for the costs of child burial. Mark Jarvis will circulate a briefing note to Councillors explaining the position.

RESOLVED that:

- The progress on the Capital Programme as set out in the report had been reviewed, including the associated spend for the first quarter and the budget forecasts for future years.
- The RAG rating for each scheme as rated by the relevant project manager had been reviewed
- The risk analysis on areas where there is a risk of material shortage, inflation, or other increase in costs had been reviewed.

289. Work Programme 2020-2021

Councillor Willetts introduced the item, and advised the Committee that it was being considered earlier than was indicated in the published agenda as there was an item to be considered related to the financial reports which had just been presented, concerning the delay in the receipt of the Annual Audit Letter.

Councillor Nissen enquired whether there had been any additional impact or increased workload for officers as the result of the Council's external auditors, BDO, not completing their work to the scheduled deadline.

Mark Jarvis, Finance Manager, confirmed that it was still hoped that the accounts would be ready to be presented to the Committee by January 2022, however, this was dependent on a number of issues. Although 80% of the audit had now started, the 20% remaining concerned two very large items which had been the subject of delays in the past. It was hoped that the audit report would be received before Christmas, which would allow Officers the opportunity to challenge and review the report prior to its submission to this Committee in January 2022. There was, however, a further complication, in that before BDO were able to sign off the Council's Statement of Accounts, they also had to sign off the Essex Pension Scheme in order to give assurances that this scheme was correct, and therefore the Council's accounts were also correct.

Mark confirmed to the Committee that there had been an impact on Council staff as a result of this delay, and that at this time of year staff should not have still been dealing with audit enquiries, but instead should have been adding value to areas of work such as the Capital Programme and revenue monitoring. The delays had caused further issues with the valuation of the Council's assets, as such valuations had been subject to change and required recalculation, and issues with staff turnover where newer members of staff would take more time to answer questions caused by the delay. Although it was hoped that Annual Audit Letter would be ready for January, if it was not ready then it could have a continued effect on the closure of the 2021/2022 accounts.

Councillors Nissen offered her thanks to Officers for their hard work under such difficult circumstances, comments echoed by Councillors King and Bentley. Councillor Bentley further considered that the Committee should invite BDO to attend its meeting in January and offer what explanation they could for the delay. He felt that it was the duty of the Committee to investigate further on behalf of the residents of Colchester.

Councillor Willetts reminded the Committee that it had written a letter of complaint at the inadequacy of the audit process, and agreed that the Committee should invite BDO to its meeting scheduled for January to further explore the reasons for the delay.

RESOLVED that:

- The contents of the work programme be noted

- That the Council's external auditors, BDO, be invited to the next meeting of the Committee in January 2022

290. Review of the Council's Ethical Governance Policies

Andrew Weavers, Strategic Governance Manager, attended the meeting to present the report and assist the Committee with its enquiries. The Committee was advised that it was requested to review the updated set of Ethical Governance Policies which were presented to it, before making a recommendation to Full Council that the Policies were included in Colchester Borough Council's (the Council) Policy Framework. It was considered that the Council's Ethical Governance Policies as presented to the Committee were fit for purpose.

The Council was committed to maintaining the highest standards of corporate and ethical governance, and the policies detailed how the Council would achieve that commitment. The Committee were advised that the Council's Statement of Intent had been refreshed following the latest change in Administration and Leader, and the Committee was also requested to recommend to Full Council that the Statement be adopted.

Councillor Willetts made reference to the fact that it had been unnecessary to invoke any of the Policies over the preceding year, and indeed very few times in previous years, and considered that this demonstrated how effective they had been. The Committee were invited to raise a question or make a comment on each of the Policies presented to it which were listed in turn, but no comments were received.

Councillor Bentley noted that the Policies contained a lot of information, and wondered whether it would be appropriate to circulate them to all Councillors ahead of their being presented to Full Council. New Councillors in particular may value the opportunity to read through the Policies before being asked to vote on them. It was confirmed to the Committee that the Policies would be circulated as soon as possible after the meeting.

Councillor Kind praised both the depth and value of the Policies in offering the public assurance that, no matter their political background or differences, Councillors conducted themselves in a fair and transparent manner, and in accordance with the codes and rules that were set.

RESOLVED that:

1. A recommendation be made to Full Council that it adopts the statement of intent in relation to ethical governance.
2. The following revised policies had been reviewed, and it was recommended to Full Council that they be approved for inclusion in the Council's Policy Framework:
 - Anti-Fraud and Corruption Policy

- Whistleblowing Policy
- Anti-Money Laundering Policy
- Covert Surveillance Policy
- Colchester Borough Council Social Media RIPA Policy
- Data Protection Policy
- Acceptable Use Policy
- Information Security Policy
- Retention Policy
- Income and Debt Management Policy

291. Annual Review of the Member's Code of Conduct and the Council's Localism Act Arrangements

Andrew Weavers, Strategic Governance Manager, attended the meeting to present the report and assist the Committee with its enquiries. The Committee were requested to review Colchester Borough Council's (the Council) Members Code of Conduct and the Council's Localism Act arrangements for dealing with complaints. The Localism Act placed a statutory duty on the Council to promote and maintain high standards among elected Members, and Full Council had delegated this function to the Governance and Audit Committee, where it formed part of the Committee's Terms of Reference.

The Committee were requested to keep both the Code and the Council's "Arrangements" under review, but were advised that they did appear to be operating satisfactorily at the present time.

The attention of the Committee was drawn to the number of Councillor Code of Conduct allegations that had been made over the past year, and although the number was slightly higher than previous years, it was not considered that there was a particular trend causing the increase which would lead to any particular concern.

The Committee was reminded that in July 2020 it had considered a proposed Model Code of Conduct which had been drafted by the Local Government Association (LGA), and had provided a formal written response to a consultation in relation to this. The LGA's Code had subsequently been published in December 2020.

Monitoring Officers in Essex had considered whether to adopt the new Model Code, however, concerns had been raised about the Members interests section of the Model Code, which it was felt would be confusing; and guidance had been sought from the LGA on this point before it was recommended that the new Model Code be adopted in Essex. The new Model Code, however, did have some strong areas, including its coverage of behaviour with supporting guidance, which was welcome. The Committee was advised that the Model Code had been revised twice since its publication less than a year ago, and it was recommended that the Committee keep

the Model Code under review, and a further report would be presented later in the municipal year, if it was felt that the Model Code was fit for purpose.

Councillor Bentley declared a non-pecuniary interest in this item as he was a member of the Local Government Association's Executive Board, although had not taken part in any discussion around the Model Code. He supported the Officer's recommendation that the Member's Code of Conduct be kept under active review.

In response to an enquiry from Councillor Fox, Andrew Weavers confirmed that any investigation into the conduct of a Councillor would automatically cease if that Councillor resigned from office, as they would no longer be subject to the Code of Conduct.

Councillor Willetts noted that the LGA scheme seemed to lack stability at present, as it had been revised twice in the past few months. He supported the suggestion that the Committee should keep a watching brief on the Model Code, and that a further report be submitted if the Model Code was felt to offer an enhancement to the Council's current code in the future.

RESOLVED that:

1. The contents of the report be noted.
2. The Members' Code of Conduct and the Council's "Arrangements" had been reviewed and no amendments or recommendations were made to Full Council in relation to the Members' Code of Conduct and the Council's "Arrangements".

292. Review of the Local Code of Corporate Governance

Hayley McGrath, Corporate Governance Manager, attended the meeting to present the report and assist the Committee with its enquiries. The Committee heard that the Local Code of Corporate Governance was the overarching document which drew the Council's Governance Policies together, and demonstrated how the Council's structures complied with the recognised principles of good governance.

The principles of good governance were set out by The Chartered Institute of Public Finance and Accountancy (CIPFA) and The Society of Local Authority Chief Executives (SOLACE), in a document published in 2007. This document had been updated in 2016, and set out six principles how local authorities should account to, engage with, and lead their local communities, and covered the actions of both Officers and Members.

The Local Code had been reviewed and demonstrated how the Council was meeting the six principles, and highlighted current or ongoing work in respect of this compliance, which was linked to the Council's Annual Governance Statement.

The Local Code had been reviewed and updated to reflect the strategic priorities for investment and the Covid-19 recovery programme, along with the continued commitment to developing hybrid meeting processes. Apart from these changes, there had been no amendments to the Local Code, and the Committee were advised that it was still fit for purpose.

Councillor Willetts noted that in the past the Committee had debated the wording of core principle two, and had expressed some reservations around the sentiment of 'Councillors working together to achieve a common purpose'. It had been agreed that the wording used by the Council would be amended to show that Councillors were working together to deliver the Council's Strategic Plan, and Councillor Willetts sought assurance that this had been reflected in the Local Code. Hayley McGrath confirmed that although the wording in the report had been drawn directly from the published principles, the Council's own code reflected correctly the previously expressed wishes of the Committee with regard to working together to deliver the Strategic Plan.

RESOLVED that: the updated Local Code of Corporate Governance for 2021/22 had been reviewed, and it was recommended to Full Council that the updated Local Code of Corporate Governance be approved for inclusion in the Council's Policy Framework.

293. Review of Member/Officer Protocol

Andrew Weavers, Strategic Governance Manager, attended the meeting to present the report and assist the Committee with its enquiries. The Committee was requested to review the Member/Officer Protocol, which provide da framework for the working relationship between Councillors and Officers. The Protocol had last been reviewed by the Committee at its meeting on 24 November 2020, and it was considered that no changes were necessary and the Protocol was fit for purpose. The Committee were requested to approve the Protocol and include it in the Council's Constitution.

Councillor Fox noted that the Protocol made provision for Ward and County Councillors to be kept up to date with details of consultations, public meetings or launch events in their Ward or Division, and enquired whether Officers were made aware of the Protocol. It was confirmed to the Committee that whenever the Protocol had been reviewed each year, Officers had been made aware of the update.

RESOLVED that: the updated Member/Officer Protocol be included in the Council's Constitution.

294. Gifts and Hospitality – Review of Guidance for Councillors and Policy for Employees

Andrew Weavers, Strategic Governance Manager, attended the meeting to present the report and assist the Committee with its enquiries. The Committee were advised that the Gifts and Hospitality Guidance for Councillors and Policy for employees were reviewed on an annual basis.

The Guidance for Councillors had been reviewed and no amendments had been made, and the Committee was therefore asked to approve the Guidance and that it be incorporated in the Council's Constitution.

The Gifts and Hospitality Policy for Employees had been reviewed and it had been updated to reflect the fact that the previous paper based record system had been moved to an online system which would make the process much simpler for employees. The Committee was requested to approve the Policy on this basis.

RESOLVED that:

1. The Guidance for Councillors regarding Gifts and Hospitality be approved and that it be included in the Council's Constitution.
2. The attached Gifts and Hospitality Policy for Employees be approved.