

# Scrutiny Panel

**Grand Jury Room, Town Hall  
10 September 2013 at 6.00pm**

The Scrutiny Panel examine the policies and strategies from a borough-wide perspective and ensure the actions of the Cabinet accord with the Council's policies and budget. The Panel reviews corporate strategies that form the Council's Strategic Plan, Council partnerships and the Council's budgetary guidelines, and scrutinises Cabinet or Portfolio Holder decisions which have been called in.

# Information for Members of the Public

## Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at [www.colchester.gov.uk](http://www.colchester.gov.uk) or from Democratic Services.

## Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to meetings, with the exception of Standards Committee meetings. If you wish to speak at a meeting or wish to find out more, please refer to Attending Meetings and "Have Your Say" at [www.colchester.gov.uk](http://www.colchester.gov.uk)

## Private Sessions

Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

## Mobile phones, pagers, cameras, audio recorders

Please ensure that all mobile phones and pagers are turned off or switched to silent before the meeting begins and note that photography or audio recording is not permitted.

## Access

There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to Angel Court Council offices, High Street, Colchester or telephone (01206) 282222 or textphone 18001 followed by the full number that you wish to call and we will try to provide a reading service, translation or other formats you may need.

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Toilets with lift access, if required, are located on each floor of the Town Hall. A vending machine selling hot and cold drinks is located on the ground floor.

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## Scrutiny Panel – Terms of Reference

1. To fulfil all the functions of an overview and scrutiny committee under section 9F of the Local Government Act 2000 (as amended by the Localism Act 2011) and in particular (but not limited to):
  - (a) To review corporate strategies;
  - (b) To ensure that actions of the Cabinet accord with the policies and budget of the Council;
  - (c) To monitor and scrutinise the financial performance of the Council, performance reporting and to make recommendations to the Cabinet particularly in relation to annual revenue and capital guidelines, bids and submissions;
  - (d) To review the Council's spending proposals to the policy priorities and review progress towards achieving those priorities against the Strategic and Implementation Plans;
  - (e) To review the financial performance of the Council and to make recommendations to the Cabinet in relation to financial outturns, revenue and capital expenditure monitors;
  - (f) To review or scrutinise executive decisions made by Cabinet, the North Essex Parking Partnership Joint Committee (in relation to decisions relating to off-street matters only) and the Colchester and Ipswich Joint Museums Committee which have been made but not implemented referred to the Panel pursuant to the Call-In Procedure;
  - (g) To review or scrutinise executive decisions made by Portfolio Holders and officers taking key decisions which have been made but not implemented referred to the Panel pursuant to the Call-In Procedure;
  - (h) To monitor the effectiveness and application of the Call-In Procedure, to report on the number and reasons for Call-In and to make recommendations to the Council on any changes required to ensure the efficient and effective operation of the process;
  - (i) To review or scrutinise decisions made, or other action taken, in connection with the discharge of functions which are not the responsibility of the Cabinet;
  - (j) At the request of the Cabinet, to make decisions about the priority of referrals made in the event of the volume of reports to the Cabinet or creating difficulty for the management of Cabinet business or jeopardising the efficient running of Council business;
2. To fulfil all the functions of the Council's designated Crime and Disorder Committee ("the Committee") under the Police and Justice Act 2006 and in particular (but not limited to):
  - (a) To review and scrutinise decisions made, or other action taken, in connection with the discharge by the responsible authorities of their crime and disorder functions;
  - (b) To make reports and recommendations to the Council or the Cabinet with respect to the discharge of those functions.

# COLCHESTER BOROUGH COUNCIL SCRUTINY PANEL

10 September 2013 at 6:00pm

## Members

Chairman : Councillor Beverly Davies.  
Deputy Chairman : Councillor Marcus Harrington.  
Councillors Dave Harris, Jo Hayes, Gerard Oxford,  
Kevin Bentley, Nick Cope, Peter Higgins and Mike Hogg.

**Substitute Members** : All members of the Council who are not Cabinet members  
of members of this Panel.

## Agenda - Part A

(open to the public including the media)

Members of the public may wish to note that Agenda items 1 to 5 are normally brief and items 6 to 9 are standard items for which there may be no business to consider.

## Pages

### 1. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to silent;
- the audio-recording of meetings;
- location of toilets;
- introduction of members of the meeting.

### 2. Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

### 3. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

### 4. Declarations of Interest

The Chairman to invite Councillors to declare individually any interests they may have in the items on the agenda. Councillors should consult Meetings General Procedure Rule 7 for full guidance on the registration and declaration of interests. However Councillors may wish to note the following:-

- Where a Councillor has a disclosable pecuniary interest, other pecuniary interest or a non-pecuniary interest in any business of the authority and he/she is present at a meeting of the authority at which the business is considered, the Councillor must disclose to that meeting the existence and nature of that interest, whether or not such interest is registered on his/her register of Interests or if he/she has made a pending notification.
- If a Councillor has a disclosable pecuniary interest in a matter being considered at a meeting, he/she must not participate in any discussion or vote on the matter at the meeting. The Councillor must withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.
- Where a Councillor has another pecuniary interest in a matter being considered at a meeting and where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillor's judgment of the public interest, the Councillor must disclose the existence and nature of the interest and withdraw from the room where the meeting is being held unless he/she has received a dispensation from the Monitoring Officer.
- Failure to comply with the arrangements regarding disclosable pecuniary interests without reasonable excuse is a criminal offence, with a penalty of up to £5,000 and disqualification from office for up to 5 years.

## **5. Minutes**

**1 - 5**

To confirm as a correct record the minutes of the meeting held on 20 August 2013.

## **6. Have Your Say!**

(a) The Chairman to invite members of the public to indicate if they wish to speak or present a petition at this meeting – either on an item on the agenda or on a general matter not on this agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

(b) The Chairman to invite contributions from members of the public who wish to Have Your Say! on a general matter not on this agenda.

**7. Decisions taken under special urgency provisions**

To consider any Portfolio Holder decisions taken under the special urgency provisions.

**8. Referred items under the Call in Procedure**

To consider any decisions taken under the Call in Procedure.

**9. Items requested by members of the Panel and other Members**

(a) To evaluate requests by members of the Panel for an item relevant to the Panel's functions to be considered.

(b) To evaluate requests by other members of the Council for an item relevant to the Panel's functions to be considered.

***Members of the panel may use agenda item 'a' (all other members will use agenda item 'b') as the appropriate route for referring a 'local government matter' in the context of the Councillor Call for Action to the panel. Please refer to the panel's terms of reference for further procedural arrangements.***

**10. Work Programme**

**6 - 7**

See report from the Assistant Chief Executive.

**11. Final Overview - firstsite - the construction project for Colchester's Visual Arts Facility**

**8 - 37**

See report from Mr. Ian Vipond, Strategic Director of Commercial and Place.

**12. Exclusion of the public**

In accordance with Section 100A(4) of the Local Government Act 1972 and in accordance with The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

## SCRUTINY PANEL 20 AUGUST 2013

*Present :-* Councillor Beverly Davies (Chairman)  
Councillors Kevin Bentley, Nick Cope, Marcus Harrington, Jo Hayes, Peter Higgins, Mike Hogg and Gerard Oxford

*Also in Attendance :-* Councillor Pauline Hazell  
Councillor Will Quince  
Councillor Paul Smith  
Councillor Anne Turrell

### **18. Apologies**

Councillor Harris gave his apology for not attending the meeting.

### **19. Minutes**

The minutes of the meeting held on 23 July 2013 was confirmed as a correct record.

### **20. Work Programme**

Councillor Hayes requested a review of parking in Colchester, to include consideration of whether Colchester's Parking Policy helps Colchester's Businesses and residents, and the benefits of the North Essex Parking Partnership (NEPP) to Colchester. Councillor Hayes added that in the context of Mary Portas's high street review it would be important to consider whether Colchester's parking policy was helping to transform their local high street into a social place, bustling with people, services and jobs.

Councillor Kevin Bentley concurred with Councillor Hayes, adding that it would also be useful when considering the benefits of the NEPP to Colchester, to also understand and examine the decision making process and the Partnership finances.

In response to Mrs. Ann Hedges, Chief Operating Officer, Councillor Hayes said she would welcome a Scoping Report at the next briefing setting out the objectives of a review of parking services in Colchester.

Councillor Anne Turrell, Leader of the Council addressed the Panel to explain that the Scrutiny Panel was the appropriate panel to scrutinise NEPP, but any consideration to the change in parking policy was the remit of the Policy Review and Development Panel.

Councillor Davies said she would like added to the Work Programme a review of Colchester General Hospital in light of the recent Keogh report.

Councillor Bentley supported the request saying it would be an opportune time to receive an update on the Clinical Commissioning Group (CCG) one year on from its inception.

*RESOLVED* that the Panel;

- i) Considered and noted the current Work Programme.
- ii) Agreed to a review of Parking Services in Colchester at the December meeting, with a Scoping Report to be presented to the Chairman and Group Spokespersons at the next briefing.
- iii) Agreed to a review in early 2014 of Colchester Hospital in light of the recent publication of the Keogh report, and to include an update on the progress of the CCG since the review of the progress on the implementation in August 2012.

## **21. 2013/14 Capital Monitor, period April to June**

**Councillor Hogg (in respect of being a Trustee of the Moot Hall) and Councillor Bentley (in respect of being a Member of Essex County Council) both declared a non-pecuniary interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(5):**

### **2013/14 Capital Monitor, period April to June**

The Panel was asked to consider the Capital Expenditure Monitor – Quarter 1 and note the level of capital spending during 2013-14, and forecasts for future years.

Mr. Steve Heath, Finance Manager, introduced the report. Mr. Heath said the Capital Programme had increased by £10.5m.

Further to the request by the Panel at the June meeting, Mr. Heath explained that the information on the CBC Enhancements element of the Bus Station capital scheme were provided in paragraphs 4.7 – 4.8 of the report.

Mr. Heath said there is currently a forecast net over-spend on the capital programme of £26.4k and details of the over-spend is highlighted in paragraph 4.10 – 4.11 of the report.

Councillor Bentley said it was a very good report but would be improved if it provided a common RAG status definition to communicate progress against each project.

Mr. Heath confirmed to Councillor Harrington that the £130,800 to be spent in 2013-14 on the Osborne Street Bus Station was an element of the S106 contribution from Essex County Council (ECC).

Councillor Paul Smith, Portfolio Holder for Business and Resources addressed the Panel to respond to Councillor Oxford, saying the £40,000 Lion Walk Activity Centre



Lift project remained in the Capital Programme. Councillor Smith said despite the concerns about the building's full DDA compliance, the lift project sum did remain in the programme

Mr. Heath confirmed to Councillor Bentley that the Capital Programme is fully funded, and where a capital scheme is not implemented, the money remains in the capital programme but is re-allocated to another project.

Councillor Smith responded to Councillor Cope by explaining that of the £170,000 balance of the Colchester Borough Council enhancements element of the Bus Station capital scheme, the bulk of this would be for updating the town's signage to reflect the new location and that a small part was for remediating the former site back to a grassed area. Councillor Smith said a breakdown of the £170,000 figure could be provided to the Panel.

Mr. Heath confirmed to Councillor Davies that the work concerning larger bus shelters as reported in the press was part of the work to be funded from the element of the S106 contribution from ECC.

Councillor Harrington enquired about whether the capital money earmarked for IT Works towards the implementation of the Sport and Leisure Fundamental Service Review was to contribute to an improvement in the telephone system currently in operation. Councillor Harrington said when ringing Leisure World you invariably went to a recorded message that explained someone will ring you back, or alternatively you could log-on to the website to make a booking. He added that given most people do not have the time to wait for someone to return their call and inevitably you are not present to receive the ring-back, it felt as if the system was trying to channel people down the on-line route.

Mrs Hedges explained that the IT capital money had been used to improve the self serve facilities, for example booking of activities on line and that the service was encouraging those able to use this facility. She was concerned about the delay on responses to the call back option and would investigate with the service.

In response to Councillor Hayes, Mr. Heath said he will provide a detailed breakdown of the anticipated expenditure for 2013-14 regarding the St Botolphs Regeneration Scheme.

In response to Councillor P. Higgins, Councillor Smith said progress on the Town Centre Square scheme will be reported to the Panel at the November meeting.

*RESOLVED* that the Panel;

- i) Noted the level of capital spending during 2013/14, and forecasts for future years.
- ii) Requested a RAG status definition within future reports to communicate progress against each project.
- iii) Requested a breakdown of the anticipated 2013-14 expenditure on the St

Botolphs Regeneration Scheme.

## 22. 2013/14 Financial Monitor, period April to June

**Councillor Bentley (in respect of being a Director of a local company paying Business Rates) declared a non-pecuniary interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(5):**

### **2013/14 Financial Monitor, period April to June**

The Panel was asked to consider and note the financial performance of the General Fund Services and the Housing Revenue Account (HRA) for the first three months of 2013/14.

Mr. Sean Plummer, Finance Manager, introduced the report. Mr. Plummer said this, the first review of the year, showed a net overspend of £181k on the current forecast outturn. He added this initial forecast is very early in the financial year and forecasts will be regularly monitored and revised as the year progressed.

Mr. Plummer said the forecast outturn for all services was a net overspend of £331,000 as shown in paragraph 5.2 of the report. The forecast also contained risks, both positive and negative. These risks will be monitored closely and the outturn forecast will be revised if necessary. Mr. Plummer also mentioned that the budget includes a number of technical and corporate budget areas such as net interest earnings, the provision to repay debt and pension costs, and the current forecast for these was an under-spend of £150,000.

Mr. Plummer concluded by saying the current projected outturn for the Housing Revenue Account was an under-spend of £75,000.

In response to Councillor Davies and the £50,000 under-spend on Bed and Breakfast and Homelessness Initiatives, Mr. Plummer said this was not a statement about the lack of services but about the assumptions made regarding the demand for these services. He added that this could change as the year progressed.

In response to Councillor P. Higgins regarding the 'red' forecast against premises related expenditure, Mr. Plummer said further detail was shown in the 'Position to date', paragraph 6.2 of the report.

Mr. Plummer agreed with Councillor Harrington that the first two column headings on appendix A, 'Budget to period 3' and 'Actual to period 3' referred to month 3 not quarter 3 and were misleading. Mr. Plummer agreed to provide new headings in future reports.

In response to Councillor Harrington, Mr. Plummer said the £100,000 adverse variance on transport related costs was a year end projection, and that at the end of quarter one the variance was a £92,000 under-spend. He added that these costs predominantly related to the Recycling and Fleet Service Area within Operational Services as commented on in appendix C of the report.

Councillor Smith agreed with Councillor Hogg that more detail was required on the net under-spend of £45,000 on Repairs and Maintenance for quarter 1. He added that he would have expected the expenditure to be higher given more of this work can be done during the summer months. He said the requested Capital Monitor RAG status definition reports would provide the kind of detail needed. Councillor Smith said the quicker turnaround of void properties (as mentioned in paragraph 6.2 of the report) was a positive sign of effective repairs and maintenance. Mr. Plummer said he would provide a detailed breakdown of the half yearly position on repairs and maintenance to the November meeting.

Responding to Councillor Bentley, Mr. Plummer said the authority is now keeping a proportion of Business Rates collected. He added that any money collected above the baseline figure is retained by the Council subject to payments required to the Government and preceptors. Mr. Plummer said whilst the report (paragraph 5.6) was not forecasting any variance, this was a complex area of work and things can change. He said a more detailed review will be carried out and reported at the half yearly stage.

Mr. Plummer added that whilst it is possible to estimate an overall collection figure based on the expected payments by direct debit plus an estimate of other payments, this was the first year of this new initiative and there are potential risks, for example, the main issue was not just around the amount collected, but the significant level of appeals lodged with the Valuation Office and not knowing the outcomes from the appeals.

Councillor Smith responded to Councillor Bentley regarding the Council's Car Park pricing policy and whether this was driving potential visitors away from Colchester to neighbouring Braintree and Tendring. He said a lot of work goes into providing marketing deals for parking and the Council's website provides the information in respect of parking offers.

Mr. Plummer responded to Councillor Oxford, saying the Council's Joint Museum Committee does have the ability to carry forward from one year to the next, under-spends and over-spends up to a value of £100,000.

*RESOLVED* that the Panel;

- i) Noted the financial performance of the General Fund Services and the Housing Revenue Account for the first three months of 2013-14.
- ii) Requested a detailed breakdown of the half yearly position on repairs and maintenance to the November meeting.



## Scrutiny Panel

Item  
**10**

10 September 2013

<b>Report of</b>	<b>Assistant Chief Executive</b>	<b>Author</b>	<b>Robert Judd</b>
<b>Title</b>	<b>Work Programme 2013-14</b>		<b>Tel. 282274</b>
<b>Wards affected</b>	Not applicable		

### 1. Action Required

1.1 The Panel is asked to consider and comment on the 2013-14 Work Programme.

### 2. Reason for Action

2.1 This function forms part of the Panel's Terms of Reference in the Constitution.

### 3. Work Programme

3.1 The review of Parking Services in Colchester is added to the Work Programme for the meeting on 10 December 2013.

3.2 The review of Colchester Hospital will be scheduled following agreement on a future meeting date with Colchester Hospital University NHS Foundation Trust.

Meeting date / agenda items and relevant portfolio
11 June 2013 1. 2012-13 Year-end Performance Report and SPAP (Leader / Hd.Community) 2. 2012-13 Revenue Expenditure Monitoring Report 3. 2012-13 Capital Expenditure Monitoring Report
2 July 2013 (extra) 1. New Housing Arrangements (Housing / Hd. Of Commercial) deferred from 11 June 2013
23 July 2013 (briefing 18 July, 5pm, S11 Rowan House) 1. Pre-scrutinise the Portfolio Holder decision 'To Close the Abbots Activity Centre' (Community and Leisure) 2. Budget Strategy, Timetable and MTFE (Leader / Business and Resources) 3. Annual Report on Treasury Management (Business and Resources)
20 August 2013 (briefing 14 August, 5pm, S11 Rowan House) 1. 2013-14 Capital Monitor, period April – June 2. 2013-14 Financial Monitor, period April – June
10 September 2013 (briefing 5 September, 5pm, S11 Rowan House) 1. Safer Colchester Partnership (Crime and Disorder Committee) (Planning and Community Safety)

<p>2. firstsite project: Final Overview (Scrutiny Panel)(I Vipond, Executive Director)</p>
<p>29 October 2013 (briefing 24 October, 5pm, S11 Rowan House)</p> <p>1. Financial &amp; Corporate Management FSR - Pre Cabinet scrutiny of Business Case (Leader)</p>
<p>12 November 2013 (briefing 7 November, 4.30pm, S11 Rowan House)</p> <p>1. Localising Council Tax Support (follow-up on 2012-13 implementation review)</p> <p>2. 2013-14 Revenue Monitor, period April – September</p> <p>3. 2013-14 Capital Monitor, period April – September</p>
<p>10 December 2013 (briefing 5 December, 5pm, S11 Rowan House)</p> <p>1. Review of Parking Services in Colchester (Street and Waste Services)</p> <p>2. Treasury Management – Half yearly update</p> <p>3. 2013-14 6-monthly Performance report and SPAP (Leader / Business and Resources)</p>
<p>28 January 2014 (briefing 23 January, 5pm, S11 Rowan House)</p> <p>1. 2014/15 Revenue Budget, Capital Programme and MTFP (Pre-scrutiny of Cabinet Decision (Leader / Business and Resources)</p> <p>2. Treasury Management Investment Strategy</p>
<p>11 February 2014 (briefing 6 February, 5pm, S11 Rowan House)</p> <p>1. 2013-14 Capital Monitor, period April – December</p> <p>2. 2013-14 Revenue Monitor, period April – December</p>
<p>18 March 2014 (briefing 13 March, 5pm, S11 Rowan House)</p> <p>1. Colchester Community Stadium Limited review (last review 20-Mar-2012)(Leader)</p>



## Scrutiny Panel

Item  
**11**

10 September 2013

<b>Report of</b>	<b>Strategic Director of Commercial and Place</b>	<b>Author</b>	<b>Ian Vipond</b> ☎ 282717
<b>Title</b>	<b>Final Overview - firstsite - the construction project for Colchester's Visual Arts Facility</b>		
<b>Wards affected</b>	All Wards		

**The Panel is invited to undertake a final overview of the outturn of the construction project which delivered 'firstsite' Colchester's Visual Arts Facility.**

### 1. Action required

1.1 The panel is asked to consider the information provided and to note the report

### 2. Reason for scrutiny

2.1 The panel undertook several reviews of the project while it was under construction particularly in the context of the works becoming stalled and project costs increasing substantially. In the event the Council was able to recover significant sums following action against those parties who the Council felt held some contractual responsibility for the project as well as the recovery of a performance bond. The building was completed two years ago and the cost reports are now being finalised which allows the Panel to do a final review.

### 3. Background information

3.1 The project to build a visual arts facility (VAF) in Colchester was developed through a dedicated partnership of Arts Council England East, East England Development Agency, Essex County Council, Colchester Borough Council, firstsite Ltd, and the University of Essex. Colchester Borough Council is now the building owner and was the lead client for the construction project.

3.2 The proposal was developed in 2003 and the original capital budget for the project was set at £16.5m and work commenced in 2006. By September 2007 following a problem with the deflection of the canopy and some other factors the project budget was increased to £17.8m. By January 2008 work had effectively stopped on site and there was a clear dispute between the Council and its main contractor. Finance and Audit Scrutiny Panel considered the project on 28 November 2008 and a good summary of the history is provided in the first independent report by the Audit Commission in April 2009 which the Panel reviewed on 28 April 2009 (attached at appendix 1). Subsequently the Panel also consider the Audit Commission's follow up report June 2010 on the 28 September 2010 (attached at appendix 2).

3.3 It is not intended to repeat the whole history of the project in the body of this report as the Appendix documents provide a suitable independent overview. Clearly compared to the original cost and time targets the project was seriously compromised. However progress

after the 2010 review was such that the project was finished within the revised budget and timescales as set at that time.

	<b>Original plan</b>	<b>Actual</b>
<b>Practical Completion date</b>	December 2007	21 July 2011
<b>Opening/re-opening date</b>	End of 2007	26 September 2011
<b>Total project cost</b>	£17,800,000	£28,199,432*

*\* This was the total build cost. Various sums were recovered through contractual and legal action that off set this cost.*

- 3.4 One of the key factors which allowed the building to be completed was that the project partners remained committed to the project's vision and to completing the project. The experience of working together and the strength of the partnership that was formed, partly due to the hurdles faced along the way, has continued since construction project completion.
- 3.5 Partners now meet as a Board about quarterly to discuss, guide, co-fund and raise the funding for key projects in the surrounding St Botolph's Quarter. This includes taking an overview of the Creative Colchester Strategy and Creative Business Centre. This helps to illustrate how the partners are committed to working to ensure that firstsite is linked to the area regeneration, unique cultural identity and strengths of the town, and economic growth agendas that were outlined in the original applications for grant funding.
- 3.6 Since opening, firstsite has proven to be an innovative and high quality building. The spaces are multi-functional and used for arts, business, education, and social activity. The building was designed as a flexible venue and since opening has been used for a programme of quality contemporary art exhibitions, conference, and civic events and social gatherings including live screening of operas.
- 3.7 The Rafael Vinoly designed architecture stands out as a significant new building of contemporary design adding to its significant impact both locally and regionally. As a regional centre of contemporary arts it has made its mark and provides a basis to allow firstsite to deliver the ambitious agenda that the organisation shares with the local Councils and the Arts Council.
- 3.8 The number of visitors, which exceeds the original business plan for firstsite, shows that it is a popular attraction that meets the changing nature of leisure, business and tourism customer patterns. A recent review by the new Director continues to re-shape the offer the organisation and building provide.
- 3.9 The impact of the project in terms of cultural, social, educational and economic regeneration was part of the original case for investment. The impact of firstsite is increasingly being evidenced; however this is slower than anticipated mostly to do with the economic downturn. Nevertheless a local building 'Greyfriars' is being restored into a boutique hotel and an adjoining building 'East Hill House' has been acquired for restaurant use with additional residential.
- 3.10 firstsite has been a catalyst to development of plans for a creative business centre and the Council is developing a marketing pack to go out to the market to find a development partner for the wider locality to drive forward these wider aims of the project. A recent Cabinet report identifies an investment opportunity for the Council in acquiring the First group bus depot.
- 3.11 Architecturally the building is working well. There were only minor issues reported by the Project Coordinator at the end of the capital works programme and snagging removed

those items that were required to be dealt with under contractual construction contracts. Likewise the defects period has been passed and any substantial issues dealt with. A few minor matters remain relating to door handles and urinal screens but operationally these have proved to be insignificant and are not being reported as an ongoing issue.

- 3.12 There were some specific issues relating to the landscape and public square works (partially within the scope of the project) such as the blocks that denoted disabled parking bays. Works have now been completed to resolve these in August 2013.
- 3.13 The final completion of the building was well-received by firstsite as the occupier and by many of the users who have continued to book revisits the building being recognised to be to a quality standard. Given the history of the project and the condition of the building at times the final quality of work is a credit to the construction team engaged at the end of the build project.

#### **4. Financial Review**

- 4.1 Appendix 3 contains the project capital costs report. This shows the final construct cost for firstsite at £28.199m which together with a contribution towards the landscaping costs of £600,000 matches the budget which was the revised funding agreed by the funding partnership at the start of what became known as phase 2. It is worth noting that the Essex County Council contribution includes a contribution from Essex University of £1m to the project.
- 4.2 Comparison is made with the September 2007 budget of £17.2m for the project costs (excludes 600k for the landscaping element). This indicates the £11m increase in project costs of the construction programme necessary to restart works on a building where the construction was stalled and open to the elements but where fees were still being incurred. There is no doubt that a significant element of this increase in costs was the three and half year delay, put simply time costs money. There was also a premium to be paid for changing the external project and construction teams and recovering a water damaged building.
- 4.3 The Council did embark on a programme of recovering the lost funds from those it felt had a responsibility for the project in phase 1 together with claiming on the Bond it held for such an eventuality. In these efforts, working with Anthony Collins Solicitors and our own legal team, the Council was very successful, although not completely so. Agreements reached with a number of parties were covered by legal agreements which restrict our ability to publicly declare the individual settlements reached.
- 4.4 However in total £7.750m was recovered. There were costs of £2m in professional fees but it must be remembered that the Council had to defend a claim against it in any event. The Council was not able to successfully recover from the original main contractor Banner Holdings Ltd despite achieving an adjudication in the Council's favour because the firm went into administration and was eventually wound up. We will never know, but it is possible that virtually the whole of the increase in costs could have been recovered if our claim against the main contractor had also been successful and paid. In the event the Council was, after recovery of all its legal costs, able to repay significant sums to each of the main funders of the second phase work, including itself.
- 4.5 The Borough Councils own contribution towards the project was thus reduced from the anticipated £4.855m to an actual £2.735m, which compares to the original 2003 commitment it made, towards the original £16.5m budget, of £1.5m.



## **5. Strategic Plan references**

- 5.1 The 'VAF' project was identified as a strategic objective in earlier versions of the Strategic Plan. The operation of 'firstsite' contributes directly to the main objective of the current Strategic Plan to make Colchester a place where people wish to Live, Learn, Work, and Visit.

## **6. Publicity considerations**

- 6.1 It is probably fair to say that no individual project in Colchester has received so much publicity over the period of its construction. Now that firstsite is up and running it is hoped that the publicity will concentrate on the programme of activities that organisation is bringing to Colchester Borough and that perhaps this final overview report can draw a line under the actual building construction project.

## **7. Other Standard References**

- 7.1 Having considered equality, diversity and human rights, health and safety, community safety implications and risk management implications, there are none which are significant to the matters in this final overview report.

## **Background Papers**

Finance and Audit Scrutiny Panel 25 November 2008 agenda and minutes  
Colchester Visual Arts Facility Audit Commission April 2009  
Finance and Audit Scrutiny Panel 28 April 2009 agenda and minutes  
Colchester Visual Arts Facility Audit Commission Follow up June 2010  
Finance and Audit Scrutiny Panel 28 September 2010 agenda and minutes

# Colchester

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# Visual Arts

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# Facility

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Colchester Borough Council

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Audit 2008/09

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April 2009

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# Background

- 1 The proposal to develop a visual arts facility in Colchester to provide new accommodation for 'firstsite', a contemporary visual arts organisation based in Colchester, was developed in 2003. The creation of firstsite: newsite was proposed as an innovative capital project building, to be purpose designed as an arts, business and social venue in Colchester. The original capital budget for the project was £16.5 million. This was to be financed by contributions from a number of sources, as follows.

  - £5 million from the Arts Council.
  - £4.995 million from the East of England Development Agency (EEDA).
  - £2.5 million from Essex County Council.
  - £1.5 million from Colchester Borough Council.
  - £2.5 million from a fundraising activity covering the private sector and trust and foundation sectors.
- 2 Colchester Borough Council (the Council) is the client organisation for the project. It appointed Turner and Townsend Cost Management as the project quantity surveyor and Turner and Townsend Project Management as the project manager. A partnership board was established to provide strategic leadership for the project. The board included representatives of the client, all of the funding partners, Firstsite and fundraising supporters of the project. In April 2007 a funders' group comprised of officers representing each of the funding partners and chaired by Essex County Council was established to address significant fundraising issues. At this time it was recognised that the project had a financial shortfall in the region of £2 million and funders agreed to make further contributions to cover this amount. As part of this process, and prior to the significant contractual issues which have subsequently affected the project, the Council agreed to complete the building at its expense should there be any over run of expenditure.
- 3 In January 2008 work on firstsite: newsite stopped. The basis of this cessation was a dispute between the Council and its contractor as to the value of work completed and whether it had exceeded the financial cap placed on the work of £12.736 million. In March 2008 the Council sought legal advice on the contractual status with the contractor. It was identified that whilst there was a contractual relationship between the two parties through the 'GC/Works/one terms' there was not a signed contract which included an enforceable fixed price for completion or a fixed end date for completion.

- 4 In March 2008 it was reported to the Council's Scrutiny Committee that the allocated budget was sufficient to complete the development. However a report in July 2008 by the project managers identified a shortfall of £2 million because of increased costs on some contracts, inflation and an increase in professional fees due to delays and prolongation of the project. Subsequently further work by quantity surveyors in the summer of 2008 identified further risks and costs which projected a further shortfall of £7.6 million bringing total project costs to around £25.5 million. In spring 2009 the main funding partners agreed to make further contributions to meet most of the £7.6 million shortfall and enable the completion and fitting out of the building.
- 5 Since the cessation of work in spring 2008 the building had been subject to environmental damage as it was neither secure nor watertight. After prolonged negotiation the Council entered into a supplemental contract with its contractor in September 2008 to make the building airtight and watertight at a total cost of £14.22 million with an agreed completion date of 22 May 2009. The procurement of the final stage of the project is to be determined by the funding partners in late spring 2009.

# Audit approach

- 6 The project has considered how learning from earlier project stages has been used to strengthen current planning and delivery. It has considered the funding position of the project and the robustness of future plans to ensure that the project is delivered and is fit for purpose.
- 7 The Council and its partners are committed to reviewing the issues and factors that have affected the project. Once the project has been completed the Council has publicly committed itself to an independent investigation as such this audit will not undertake an historic review of issues affecting project delivery.

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# Summary Conclusion

- 8 The Council and its funding partners are taking action to address previous weaknesses in project delivery and assure the completion of the project. All funding partners are demonstrating a strong commitment to the completion of the project. They are increasingly engaged in the detailed monitoring of project delivery prioritising the understanding of completion costs and ensuring that value for money is achieved for the final stages of project delivery. Funding partners are providing additional resources to meet the estimated budget shortfall. Project management capacity has been enhanced through the appointment of a completion coordinator. Contractual arrangements to support the delivery of the supplemental contract to make the building secure and watertight have been strengthened. Action has been taken to improve communications although this is at an early stage.
- 9 Despite these actions, risks to the successful delivery of the project remain. Key decisions, such as roles and responsibilities in future project management and the allocation of contracts for the completion of the project, have yet to be taken. Professional disputes remain a significant risk - for example where there is a lack of agreement on the contractual relationship for their resolution such as the replacement of damaged cladding. Public perception of the project is currently poor and further delays to completion pose significant risks for funding partners.

# Main Report

- 10** Partner organisations are increasingly engaged and continue to demonstrate a strong commitment to the completion of the project. Funding partners strategic engagement with the project is increasing, particularly in the last 12 months. For example Essex County Council has established a group of specialist officers to challenge decisions and EEDA has undertaken its own internal audit of its relationship with the project. All funding partners have agreed to release additional resources to complete the project. The Council, the Arts Council and Essex County Council have provided a further £2 million each whilst EEDA have offered £0.75 million. In total this provides an additional budget of £6.75 million against an original estimated additional cost of £7.6 million. There is a political consensus within the Council and tangible partnership support for the completion of the project.
- 11** There are sufficient funds to initiate the final stage of the project. The availability of £6.75 million is sufficient to enable procurement for stage 2 to proceed. There is a perception that in the current economic downturn firms will be more competitive in their tenders, potentially reducing costs, although this has yet to be tested. Some progress has been made in reducing the estimated costs for completion for example through reductions in some professional costs, with the project manager assessing that the original estimate of £7.6 million has been reduced to £7.1 million.
- 12** The Council and its partners have improved their capacity to act as an intelligent client. Historically there has been a lack of robust technical challenge to the project. Whilst early external reviews of project arrangements, through the Gateway process, indicated that adequate project management arrangements were in place partners now feel that the appointment of a client project manager at the start of the project would have been beneficial. For example establishing a contract with fixed costs and completion date. The appointment of a completion co-ordinator has improved the level of technical challenge both to the strategic delivery of the project and to the delivery of the construction side of the process. The completion co-ordinator was appointed through a tender process and has a track record of resolving issues affecting the completion of other public sector arts projects. The Council has now employed an external firm of solicitors to resolve disputes with current project manager and contractor. The capacity of the Council and its funding partners to manage the project through to completion has been enhanced.
- 13** Contractual arrangements to support the delivery of the supplemental contract have been strengthened. In March 2008 the Council sought legal advice on the contractual status with the contractor. This indicated that whilst there was a contractual relationship it did not include an end date or fixed price. The supplemental contract to make the building secure and watertight is now more robust - for example it includes costs and end dates and penalty clauses for overruns. It was developed to transfer as many risks as possible to the contractor.



- 14** Despite these improvements risks in contractual arrangements remain. There is a lack of consensus over the level of staged payments and responsibilities for making good aspects of the original work are not yet agreed. The delivery of the project against an agreed end date is now estimated to be ten weeks behind schedule at the end of February 2009. Contractual arrangements have been improved but risks have not been fully mitigated.
- 15** The Council and its partners are prioritising an understanding of completion costs. All partner organisations are committed to achieving best value and value for money in the completion of the project. Previous estimates to complete the project were not seen by funding partners as robust for example significant contingency sums were include which may or may not be required. The completion co-ordinator was asked in the first six weeks of appointment to carry out a due diligence process to identify the schedule of risks and services to complete the project. As part of this report, delivered in early February 2009, funding bodies asked for a significant input in determining completion costs. The report was completed on time and outcomes of this work will inform the procurement process for stage 2 of the project and enable costs to be assessed accurately.
- 16** Inconsistencies in project communications are still to be addressed. Historically the project suffered from difficulties with communication with several partners feeling that information was not shared consistently and in some cases was not robust or transparent. Colchester Borough Council now has responsibility for the management of communications although its capacity in this area is limited. Plans to establish a communications group chaired by the completion coordinator have not been progressed. Despite this the portfolio holder with responsibility for the delivery of the project at the Council has taken effective action to improve the openness of reporting both across partners and for the public.
- 17** Public perception of the project is currently poor. The project has had a history of opposition from some groups for example over its perceived impact on the bus station and an ancient scheduled monument. Publicity relating to the delays and disputes relating to the project since January 2008 has led to wider concerns about costs to local taxpayers.
- 18** Key decisions on the future of the project remain to be taken. The due diligence report identifies service risks to the delivery of the project and proposes how they might be addressed. Decisions on the degree to which funding partners will accept this advice have yet to be taken. Plans to further extend the project management capacity of Colchester Borough Council are yet to be agreed. Plans to consider final contract specification for stage 2 (the final completion and fitting out of the building) out are not yet developed. Partners identify that there is a need for more certainty on costs and completion dates before these plans can be finalised.

## Main Report

- 19** Roles and responsibilities in delivering the completion of the project are yet to be finalised. The completion co-ordinator has been appointed by Essex County Council on behalf of the funding partners. It is anticipated that this strategic role will also deliver some of the executive functions on behalf of Colchester Borough Council but the detail of this is not yet resolved. The completion co-ordinator role is also providing some additional project management capacity for Colchester Borough Council but the future of this arrangement has still to be determined. The contractor perceives that their formal relationship is with Colchester Borough Council and not through a third party. There is not a consistent understanding or acceptance of roles and responsibilities of organisations responsible for the completion of the project.
- 20** Professional disputes remain a significant risk for the completion of the project. Risks still exist to the completion of stage 1 - for example identified risks where there is a lack of agreement on contractual relationship, such as the replacement of damaged cladding where there is no agreement on responsibilities and which need to be resolved before completion. The Council is currently evaluating the performance of its advisers and the contractor in relation to the project as a whole. However there is not yet a process in place to resolve disputes over construction issues, for example responsibility for issues arising from the storm overflows. Proposals to move towards disputes adjudication which could enable construction issues to be addressed have not yet been achieved. Some professional fees have been renegotiated reducing overall project costs. Contractual disputes remain unresolved and pose an ongoing risk to completion.
- 21** Further delays to completion pose significant risks for funding partners. Partners acknowledge that whilst there is a need to manage risks it is important to complete the project as soon as possible in order to minimise ongoing professional costs, reputation costs and the risk of losing momentum. A risk from further delays is that Firstsite is itself tied into major sponsorship for revenue which may be lost if cannot deliver its business plan to the agreed timescales. There is a significant risk if the contractor determines to terminate the contract when there would be insufficient funding available in the short term to deliver the supplemental contract to completion. The Council has agreed to complete the building at its own cost should funding from other partners not be forthcoming, which is a significant risk although not imposed by funding partners at this time. A decision to stop the project could result in funding partners requiring repayment of existing investments up to £14.22 million. Delays in the completion of the building pose longer term risks for the work of 'Firstsite'.

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# Recommendations

**22** In order to ensure timely and cost effective completion of the Visual Arts facility the Council and its funding partners should ensure that:

- they have sufficient capacity to act as an intelligent client throughout the final phase of project;
- there are robust costed plans for completion which are SMART and established on a robust and enforceable contractual basis;
- risks and plans for their mitigation are accurately detailed and monitored in an open and transparent manner;
- progress with the delivery of the plans, against allocated budgets, is monitored in an open and timely manner; and
- improvements to communication lead to the sharing of consistent and accurate information about the project both internally and externally.

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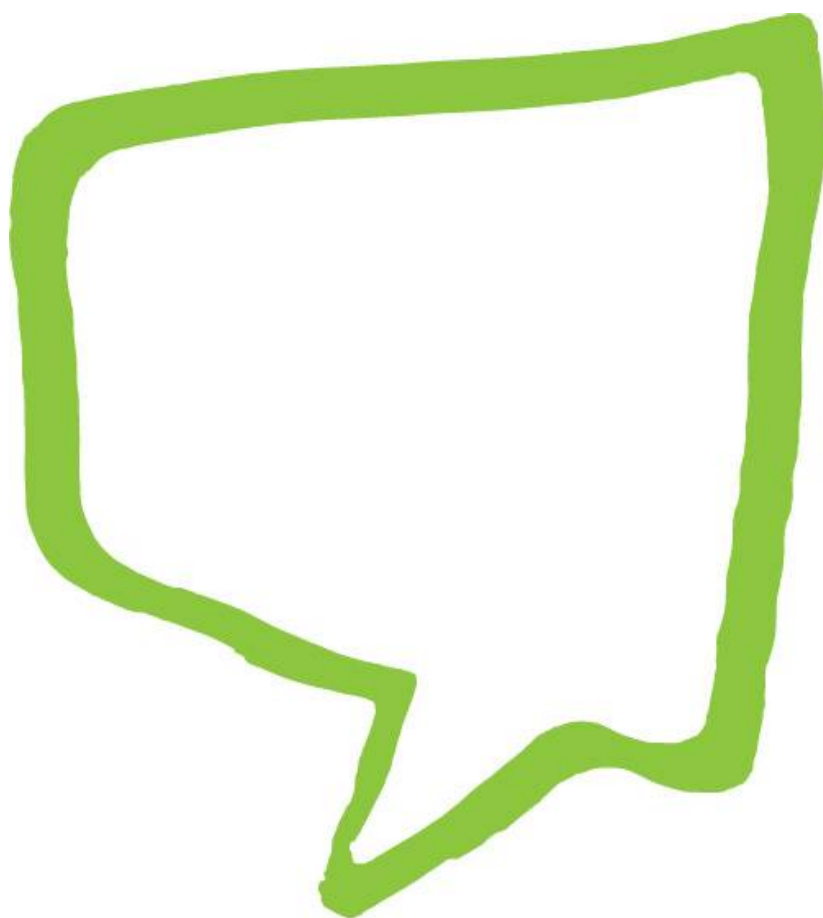
# Colchester Visual Arts Facility

**Follow up**

Colchester Borough Council

Audit 2009/10

June 2010



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# Background

- 1 The proposal to develop a visual arts facility in Colchester was drawn up in 2003. It was planned to provide new accommodation for 'firstsite', a contemporary visual arts organisation based in Colchester. Work commenced in 2006, but was halted in January 2008 because of a dispute between Colchester Borough Council (the Council), which is the client lead for the project, and the contractor at that time, as to whether the value of work completed had exceeded the financial cap of £12.736 million allocated to complete the building.
- 2 An initial view was taken that the expected costs of completing the building would exceed the funds made available by £2 million. However subsequent work by quantity surveyors, in the summer of 2008 identified further risks and costs which projected an additional shortfall of £7.6 million, increasing the total project costs, that is a completed and functional building, to around £25.5 million. In September 2008, after prolonged negotiation, the Council entered into a supplemental contract with its contractor to make the building airtight and watertight at a total cost of £14.22 million for the building element of the work with an agreed completion date of 22 May 2009.
- 3 The plans to deliver an airtight and watertight building were not delivered and as at December 2009 the building remained incomplete. There is now agreement between the main stakeholders to ensure that the project is completed. New project managers have been appointed and additional funding has been made available by the Arts Council and Essex County Council to complete the project. Currently progress against targets to make the building airtight and watertight by May 2010 is on track.

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# Scope and objectives

- 4 The review has considered progress on the project, its current funding position, in particular the ongoing commitment of partners to the funding arrangements, and arrangements for alternative sources of funding if current arrangements fail. It also considers the robustness of future plans to ensure that Visual Arts Facility is completed and is fit for purpose.
- 5 We have evaluated progress against the recommendations of a previous review of the visual arts facility published by the Audit Commission in April 2009. Specifically that:
  - there is sufficient capacity to act as an intelligent client in the final phase of the project;
  - there are robust costed plans for completion which are SMART and established on robust, enforceable and costed basis;
  - risks and plans for their mitigation are sufficiently detailed and are monitored in an open and transparent manner;
  - progress with the delivery of the plans against allocated budgets is monitored in an open and timely manner; and
  - improvements to communication lead to the sharing of consistent and accurate information about the project both internally and externally.



# Audit approach

6 The work started in December 2009 and was completed in March 2010.

7 Document reviews included:

- internal reports and communications, including reports to the Executive, risk assessments and Cabinet minutes; and
- external reports and communications, including VAF funder's group minutes and reports to the external funding organisations.

8 Interviews included:

- councillors and senior officers of Colchester Borough Council; and
- representatives of the main funding agencies.

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# Conclusions

## Summary Conclusion

- 9 There is increasing confidence amongst the funding partners and the Council that the first phase of the VAF project will be completed in the revised timescales and budget. Project management has improved significantly and progress against agreed plans is good. Agreements, in principle, are now in place to provide the additional resources required to complete the second and final phase of the project. Despite this some significant risks remain in relation to both ongoing cost uncertainties and the potential impact of further delays and cost reductions on the future use of the building.

## Main Conclusion

- 10 There is confidence and commitment amongst all partners that the building of the visual arts facility (VAF) will be completed by May 2011. Progress against phase 1a of the project, which is to make the building air tight and water tight, is on time and within budget. There are high levels of confidence that an airtight watertight building will be made available in July 2010. At this stage, the risks of further deterioration of the building due to the elements will have been minimised. There is a sense of confidence amongst the partners that completion of the project is now achievable. The significant financial penalties, particularly for Colchester Borough Council, and loss of reputation for all funding partners are strong drivers for completion. There is a desire from all partner organisations to support the project through to completion.
- 11 Communications around the project have been transformed. Internal communications are now good and improving and funding partners now also feel that communications are good. Partners receive regular, timely reports on project progress and risks. Within the Council there is a commitment to disseminating all but commercially sensitive information as widely as possible. The Cabinet receives regular updates from project and funder meetings. Internal communications are effectively supported by the Council's own communications team and those of partner organisations. Partners are open about the project, its progress and the challenges it faces.
- 12 Partners have identified significant improvements to project management in phase 1a 2010. Contractual arrangements are seen as robust and delivering against targets. Councillors particularly praise the openness of the contractor, for example in enabling site visits. Specialist advisors noted better management of the site including improvements to health and safety. Closer checking of compliance with design briefs and assurances of staff competence were introduced. There is tangible evidence that project management arrangements have improved.

## Conclusions

- 13** Increased capacity as *intelligent clients* has improved the management of the project, although there are some partner concerns that the Council's client team lacks independent quantity surveyor and project management skills. The VAF funders' group has extended its capacity as an intelligent client through the appointment of a completion co-ordinator. This has enabled the group to challenge more effectively and ensure they have the relevant information to support those challenges. There is a much better understanding of roles and responsibilities on the part of funders and the Council. Project director, completion co-ordinator and other technical advisors are providing good support to the Council. They give both partners and the Council more confidence that the project can and will be completed. Despite this the Council's capacity to challenge costs proposed by the contractor is limited. The understanding of project delivery has improved but the capacity of the Council to challenge its advisors must be maintained.
- 14** Some risks to 'Firstsite', caused by delays to completion, have been mitigated but others remain. The Arts Council has provided support to Firstsite ensuring that some of the external funding allocated by external bodies has been retained despite delays. It has also supported the move from temporary accommodation enabling Firstsite to establish a presence in Colchester town centre and to purchase a building which will ultimately become a facility for visiting artists. The new 'shop front' has enabled Firstsite to further raise its profile with the public. However, significant sums of money are linked to a lease for the VAF being completed and other sums have been ring fenced although risks remain that the protection of these funds could be withdrawn. Delays in the completion of the VAF have therefore not had the anticipated negative impact on external funding for Firstsite, but this continues to be a threat in the future.
- 15** Concerns that cost savings could affect the final quality of the building are being addressed but there is not a consensus on what this means in practice. Some partners were concerned that the impact of value engineering and budget reductions could reduce the quality in phase 2 completion. This in turn could detract from the future use of the building, particularly aspects of high value commercial activity. The funding body acknowledged the principle that whilst the project should look for savings this should not be at the expense of quality. Recent decisions on the release of additional funds are based on maintaining the quality of finish. However there remains a view amongst some local councillors that costs to local tax payers should be minimised and that this could include reducing the cost and quality of the final fit out. Whilst there is therefore a commitment to maintaining a high standard of completion in the final phase of the project what this means and how it will be funded is not yet clear.
- 16** Delays in completion of the first phase of the project have resulted in further deterioration and increased costs for rectification. Initial plans to make the building airtight and watertight were not delivered. The building continued to remain open to the elements and pest damage throughout 2009. This resulted in further damage to work already undertaken, such as to wall cladding. This damage is now being rectified as part of phase 1a with additional costs to the overall project. There is not yet cost certainty for final completion of the building but estimates suggest that it has risen further to between £27.5 and £28.5 million.

- 17** Despite some uncertainty over final costs, proposals to fund the final, phase 2, completion of the VAF are in place but not yet finalised. In March 2010, the funders group agreed the contract management approach to be employed for completion of the final phase of the VAF. The current external contractor will be engaged to extend the construction management approach for phase 1a into phase 2. The estimated costs of phase 2 are £7.5 million leaving a budget shortfall of £3.5 million. There is still some volatility around these costs, which continue to rise. There is an agreement in principle that this shortfall will be met by further contributions from the Arts Council (£1.5 million), Essex County Council (£1.5 million) and Colchester Borough Council will (£0.5 million by forward funding part of the bond currently subject to legal action). However, this commitment in principle remains to be ratified by these organisations following the election in May 2010. If agreed, this approach will mean that project completion is not dependent upon the outcomes of legal action, reducing risk in this area. As £4 million is already available for the completion of phase 2 work, this can commence before agreement on additional funding is finalised. The VAF project can therefore progress to its final stage although all the resources required for completion are not yet agreed.
- 18** A range of issues linked to the completion of phase 2 are as yet unresolved. A final detailed specification for the completion of phase 2 is not yet in place. Some aspects of the building have had to be redesigned such as the acoustic ceiling in the auditorium. The scope of works required is unclear and this needs to be defined, including ongoing remediation so that contractors are clear about expectations. The level of detail and specification for final designs and the level of engagement with the sub contractors in determining the final specification have not been agreed. There is some disparity in professional advisor and contractor views in this area; the latter feeling that there should be some flexibility in the final design to enable more effective working with sub contractors. Plans and specifications for the completion of the final phase still need to be developed and agreed.
- 19** Despite the positive progress with phase 1a, there remain significant risks for the Council. As part of an agreement to get additional investments from the funders in 2008, the Council accepted all risk for the final completion of the project. Funding partners have chosen not to enforce this aspect of the contract at this time but it remains a risk which needs to be mitigated. Failure of the project would mean that the Council could be required to refund external investment in the region of £12 million. The Council is responsible for ensuring external works such as landscaping are completed in the same timescales as the building. A project manager is currently being appointed to co-ordinate this work. It is anticipated that the £0.6 million required to complete the landscaping will be released from the bond subject to adjudication in April with the remainder being provided by Haven Gateway Partnership.

## Conclusions

- 20** The impact of legal action against the project's original contractors poses a significant risk for the Council. If successful, the Council intends to release the previous contractor's bond and invest it into the budget shortfall. However the outcome of legal action remains uncertain. A recent adjudication decision has gone in favour of the Council, although this has been contested by the original contractor. Litigation against the contractor will take place in November 2010. The risk of this is solely with the Council which has allocated resources to support the action. The Council's legal advisors have indicated that there is a good legal case to be made against the contractors. The Council is planning to use any resources which are released from the bond to support the project; for example to pay for landscaping. If the bond is not released this will be a further cost the Council will need to meet. There are significant financial risks associated with an unsuccessful outcome of planned legal action.
- 21** The opportunity to explore alternative and potentially more cost effective approaches to project delivery are constrained by a lack of time due to rising costs and the need to take immediate action. The Council chose to identify the new contractor from a framework contract used by Essex County Council (which complies with OJEU procurement regulations) rather than by open tender. It was concluded that the contractor's track record with Essex County Council provided support for their engagement. The new contractor advised that a construction management approach would be the best way to deliver phase 2 of the project. Despite the possibility that individual tenders for work might be cheaper, all partners agreed that the risks associated with that approach were high, particularly extended completion time, and agreed the construction management approach. Decisions made about the project are being made pragmatically but opportunities to explore alternative have been constrained.
- 22** Plans to improve external communication about the VAF are in place but impact at this stage is limited. The public are not clear about the future plans for the VAF. A group of local residents remain opposed to the project and express this opposition through the local press and other media. There is limited engagement with the general public who appear to be at best neutral about the project, although some feel it was forced upon them. External communication about the project during 2009 was limited. However in late 2009, the communications strategy was refreshed and there is now a clear communications plan to improve public awareness of the VAF and what it can offer. It is anticipated that improved communications will begin to impact on local people during the summer of 2010, in part linked to the completion of phase 1a. The potential benefits of the VAF to local people have as yet not been marketed effectively. Local people are not well informed about the VAF and its future.

**23** Decisions relating to the VAF project have been subject to public scrutiny but have not been reviewed in detail by the Council's scrutiny function since March 2009. The increasingly transparent decision making relating to the VAF project means that in the last year it has been subject to extensive public scrutiny. There has been political agreement in the Council not to use the project as 'a political football'. Decisions relating to the VAF project were primarily taken by Cabinet and subject to public scrutiny. However there was no internal scrutiny review of the project. Progress reports were received but not specifically challenged. The scrutiny function has limited capacity within the Council and other areas of risk, such as decent homes, were prioritised over the VAF project. Whilst scrutiny does review general risk registers it has not reviewed the VAF register in the last year. It is acknowledged that to scrutinise the project effectively, scrutiny would need an intelligent client function providing sufficient technical expertise to challenge decisions. Independent internal challenge to the project has been limited over the last year.

### Recommendation

**R1** The Council should ensure that:

- it has sufficient capacity to challenge all aspects of the delivery of phase 2 of the project;
- external communications and marketing relating to the VAF, and in particular its future use, are robust and inform the general public of the use and potential of the building; and
- it scrutinises the final stages of the project to ensure that it delivers value for money.

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Income

Funding Organisation	Original Funding £	Amount £
EEDA	5,495,000	6,245,000
ACE	5,750,000	9,250,000
ECC	4,000,000	7,500,000
FS		258,000
CBC	1,755,000	4,855,000
Fund Raising	800,000	701,086
	<b>17,800,000</b>	<b>28,809,086</b>
Transferred to Landscaping Project	0	600,000
Funding for Building Project	<b>17,800,000</b>	<b>28,209,086</b>



## Expenditure

## APPENDIX 3

Activity / Cost Centre	Original Budget £	Expenditure £
<b>Construction</b>		
Construction contract (Banner Holdings)	13,449,260	12,235,460
Construction contract Richardson Roofing		1,615,687
Construction contract Conabeare		111,197
Construction contract Firman		681,437
Construction contract Continental		23,040
Construction contract Stroma		3,050
Construction contract Fireclad		1,602,594
Construction contract Ruddy Joinery		2,330,236
Construction contract Glazzard		203,679
Construction contract S Lucas		86,495
Construction contract Mitie		1,519,107
CBC direct costs (prelims)		434,094
Jackson Coles		462,839
Mace (incl reimbursable costs)		1,952,017
	<b>13,449,260</b>	<b>23,260,932</b>
<b>Furniture, Fittings and Equipment</b>		
Furniture, etc	1,220,000	738,078
	<b>1,220,000</b>	<b>738,078</b>
<b>Arts Commissions</b>		
Public art		114,865
Mosaic Benches		38,754
	<b>0</b>	<b>153,619</b>
<b>Fees and Charges</b>		
Consultants' fees	2,028,149	
Project manager (TTPM)		211,945
Architect (RVA)		1,537,649
M&E engineer (Arup)		542,209
Structural engineer (AKT)		345,843
Cost consultant (TTCM)		279,998
CDM Co-ordinator (Arup PS)		35,194
Fire engineer (Warrington / Exova)		34,785
Acoustic consultant (Cole Jarman)		53,460
Access consultant (TTMS)		14,091
Lighting consultant (BDP)		98,167
Retail consultant (Selina Fellows)		9,121
Catering consultant (PBP)		16,993
ditto above (Wave Science Technology Ltd)		70,082
ditto above (Dimension Data)		86,134
Environmental consultant (AERC)		66,098
Landscape designer (Parklife/Scape)		36,889
ditto above (Gross Max)		20,748
Security consultant (Arup)		28,155
Site investigations and surveys	33,900	161,726
Planning fees, building regs fees	23,860	40,307
Other fees and expenses		164,921
Legal		143,028
Colchester Borough Homes - Clerk of Works		49,260
	<b>2,085,909</b>	<b>4,046,803</b>
Miscellaneous Other Costs	507,500	0
	<b>507,500</b>	<b>0</b>
<b>Total Project Capital Costs</b>	<b>17,262,669</b>	<b>28,199,432</b>





