

Finance & Audit Scrutiny Panel

Town Hall, Colchester

25 November 2008 at 6:00pm

The Finance and Audit Scrutiny Panel deals with the review of service areas and associated budgets, and monitors the financial performance of the Council, and the operational performance of the Council. The panel scrutinises the Council's audit arrangements, including the annual audit letter and audit plans, and Portfolio Holder 'Service' decisions reviewed under the Call in procedure.

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 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 pick up the leaflet called "Have Your Say" at Council offices and at 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 before the meeting begins and note that photography or audio recording is not permitted.

Access

There is wheelchair access to the Town Hall from West Stockwell 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.

Facilities

Toilets are located on the second floor of the Town Hall, access via the lift. A vending machine selling hot and cold drinks is located on the ground floor.

Evacuation Procedures

Evacuate the building using the nearest available exit. Make your way to the assembly area in the car park in St Runwald Street behind the Town Hall. Do not re-enter the building until the Town Hall staff advise you that it is safe to do so.

Colchester Borough Council, Angel Court, High Street, Colchester
telephone (01206) 282222 or
textphone 18001 followed by the full number that you wish to call
e-mail: democratic.services@colchester.gov.uk
www.colchester.gov.uk

Terms of Reference

Finance and Audit Scrutiny Panel

- To review all existing service plans and associated budget provisions against options for alternative levels of service provision and the corporate policies of the Council, and make recommendations to the Cabinet
- To have an overview of the Council's internal and external audit arrangements and in particular with regard to the annual audit plan, the audit work programme and progress reports, and to make recommendations to the Cabinet
- To monitor the operational and financial performance of the Council, and to make recommendations to the Cabinet in relation to operational performance, financial outturns, revenue and capital expenditure monitors
- To scrutinise the Audit Commission's annual audit letter
- To scrutinise progress made on best value action plans
- To scrutinise executive 'service' decisions made by Portfolio Holders and officers taking key decisions which have been made but not implemented referred to the Panel through the call-in procedure

The panel may a) confirm the decision, which may then be implemented immediately, b) refer the decision back to the decision taker for further consideration setting out in writing the nature of its concerns, or c) refer the matter to full Council in the event that the Panel considers the decision to be contrary to the Policy Framework of the Council or contrary to, or not wholly in accordance with the Budget.

**COLCHESTER BOROUGH COUNCIL
FINANCE & AUDIT SCRUTINY PANEL
25 November 2008 at 6:00pm**

Members

Chairman : Councillor Lissimore.
Deputy Chairman : Councillor Willetts.
Councillors Bentley, Bouckley, Goss, Harris, Maclean,
Manning, Offen, Oxford and Sykes.

Substitute Members : All members of the Council who are not Cabinet members or 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 off or to silent;
- 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 personal

interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

5. Minutes

Minutes of the meeting held on the 18 November 2008 and this meeting (25 November 2008) will be confirmed as a correct record at the next meeting of the panel.

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. 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.

8. Referred items under the Call in Procedure

To consider any Portfolio Holder decisions, taken under the Call in Procedure.

The panel may a) confirm the decision, which may then be implemented immediately, b) confirm the decision back to the decision taker for further consideration setting out in writing the nature of its concerns, or c) refer the matter to full Council in the event that the panel considers the decision to be contrary to the Policy Framework of the Council or contrary to, or not wholly in accordance with the Budget.

9. Decisions taken under special urgency provisions

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

10. Firstsite:newsite

1 - 5

See report of the Executive Director, Mr Ian Vipond.

11. Exclusion of the public

Occasionally the Panel will need to discuss issues in private. When the Panel does so, members of the public will be asked to leave the meeting.

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).

**COLCHESTER BOROUGH COUNCIL
FINANCE & AUDIT SCRUTINY PANEL
25 November 2008 at 6:00pm**

Agenda - Part B
(not open to the public or the press)

	Pages
12. Firstsite:newsite	6 - 8

The following report contains exempt information (financial/business affairs of a particular person, including the authority holding information) as defined in paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.

See report of the Executive Director, Mr Ian Vipond.



Colchester

Finance and Audit Scrutiny Panel

Item
10


25 November 2008

Report of

Executive Director

Author

Ian Vipond

 282717

Title

Firstsite:newsite

Wards
affected

Not applicable

The Panel is invited to review the Council's capital arrangements for the Visual Art Facility project – 'firstsite:newsite'

1. Action required

- 1.1 The Panel is asked to note the Council's capital arrangements for the firstsite:newsite project.

2. Reason for scrutiny

- 2.1 The Chairman of the Finance and Audit Scrutiny Panel has requested a review of the capital finance arrangements for firstsite:newsite, including information relating to the contractual arrangements.

3. Background information

- 3.1 Firstsite:newsite has been designed as a flexible and multi functional building to deliver space for high quality exhibitions, retail, learning, conference and as an accessible visitor experience which can adapt to future customer requirements. The cultural, social, economic and regenerative impact both locally in St Botolph's and the Town but also to the region was why a range of local and regional funders chose to invest in this project. The funding partners remain committed to the original vision and therefore to seeing the project completed.
- 3.2 A capital budget of £16.5 million was set for the project in 2003. The funding partners are:

Arts Council England East
East of England Development Agency
Essex County Council
Colchester Borough Council
University of Essex (Donation)

Firstsite (capital fund raising through Trusts, Foundations and private sponsors)

3.3 The £16.5 m was to cover:

Construction Costs	£13.32m
Professional Fees	£2.52m
Equipment	£0.66m

3.4 In September 2007 a case was agreed to increase funding to £17.8m. This was because of a number of factors including canopy deflection and inflation above original estimates (the development industry was at its peak)

The £17.8m was to cover:

Construction Costs	£14.17m
Professional Fees	£2.76m
Equipment	£0.66m
Servicing Cash Flow	£0.20m (this is the cost where CBC advance funds prior to funders' contributions).

The Borough Council's Capital commitment under this funding arrangement is for £1,755,000 but importantly the funding agreements by which the other funders put in the substantial part of the £17.8m place the responsibility for funding any increase in costs with CBC as the 'client'.

3.5 Original Contractual relationship with Banner Holding Ltd

3.6 The original contractual relationship between The Council and Banner Holdings (Banners) is set by a purchase order issued by CBC which imposes an obligation to work on the contract pursuant to the 'GC/Works/1 terms' and to a ceiling of £12.736m (The Cap). CBC therefore did and does have a contractual relationship with Banner Holding Ltd, but the actual contract remained unsigned and so importantly it was not a contract which had either an enforceable fixed price for completion or a fixed date for delivery. What was 'indisputable' is that the parties were committed to valuation of the work, as the way to determine what should actually be paid. This is important as until as late as February 2008 the cost report indicates a forecast out-turn of £17.34m which includes a risk provision of £377.5k i.e. within budget, although the same month's risk report had risks costed at £2.44m.

3.7 In February 2008, the total works completed under this contract was valued by Turner and Townsend Cost Management at £10.026m. CBC was paying 95% of the valued works in order to maintain 5% retention. Banner argued that in terms of sub contractual commitments that they had been instructed to enter into commitments beyond 'The Cap'. This is why work effectively ceased on site (in the majority only minor and remedial work was taking place).

3.8 Project Costs

- 3.9 An exercise was undertaken in July to estimate the actual costs of completing the project (target cost verification). The estimate considered what had already been committed within The Cap, what was instructed or committed but deemed to be outside The Cap and what was still left to be procured and to pay for. This exercise gave a very different picture to the monthly cost reports.
- 3.10 The report provided by Turner and Townsend in July suggested that if all the estimated construction costs are realised then the potential construction costs are in the order of £5m above the current funded allowance of £14.17m for construction works. This rise in construction costs is a result of an estimated extra £2m for increased costs on glazing and roofing contracts, with the remainder largely down to the delays and prolongation of the build programme and a resulting inflationary allowance.
- 3.11 Furthermore the work undertaken also assessed the likely time for completion which in July was estimated to be June 2009. Additional professional fees would be payable during this period. Turner and Townsend our project management consultants estimated an increase of over £1m taking the total professional fees to an estimated £3.8m for the project. Clearly if the period of the project prolongs further then the fees potentially increase accordingly. There is no projected increase in equipment costs (which will be directly funded by Firstsite) and the report is silent on servicing cash flow which was an anticipated cost.
- 3.12 Since a supplemental agreement to the GC Works contract was agreed with Banner (see below), further work has been undertaken by quantity surveyor representatives across the partnership to assess the likely costs to complete taking into account what is now fixed by the contractual arrangements and including consideration of the likely tender process for completing the project.
- 3.13 The review has identified several areas of risk that the Council will seek to manage to improve the outturn cost on the completion stage of the project. (These risks include factors affecting the professional team's fee settlements and other commercial arrangements and there is more detailed provided in the attached confidential paper.) Taking these factors into account, the projected estimates on additional construction costs, professional fees and the inclusion of an allowance for contingency would bring the total project costs to around £25.5m against funding of £17.8m so the current projected shortfall is in the order of £7.6 m.

3.14 Discussions continue with the other funders and despite this Council's legal obligation to cover any further increase in costs above the £17.8m the funders have indicated that collectively they will seek to assist the Council where possible to meet the funding shortfall.

3.15 Current Contractual Position

3.16 On 16 September 2008 the Council signed a supplementary contract with Banner Holdings for £14,220,000 to complete the external fabric of the building to a standard of permanent weather tightness (air and water tight). A bond for 10% of the value of the work that Banner has to complete (£1.4million) was also put in place. The contract completion date is 22 May 2009.

3.17 The scope of Banner's contract is to complete the roof and side cladding to provide a weather and air tight building envelope; complete glazing, external doors and louvers; and any other works that are required for the building to pass the Part L2 air test. There is no contract for Banner to finish internal works beyond this scope under the current contract. Therefore no more work will take place on partially completed internal packages or those not yet ordered until a new contract is tendered and entered into for those works. The Council and other Funders will obviously not know the actual price for those works until tenders for that work are received.

3.18 The Council is currently reviewing the scope of works to complete the building and the forecast outturn costs through a series of meetings with quantity surveyor representatives from Arts Council England East, East of England Development Agency and Essex County Council and Turner and Townsend. The fit out or completion scope of works includes completion of: mechanical and electrical works and providing for the necessary commissioning process and warranties; partitions and ceilings package; architectural metalwork and plant room metal work; carpentry and joinery; secondary steelwork; plant room F louvers; and the internal finishes (timber panelling, kitchen fit out, toilet fit out, ceramic and stone tiling, hardwood flooring, signage, decoration, fitted furniture, retail fittings and external and landscaping works). The earliest this work could be completed would be autumn 2009. Firstsite have then to do their own fit out of equipment such as computers etc.

4. Financial Implications

4.1 There are clearly significant financial implications for the Council. At present it would appear that the Council has a potential additional capital liability in the order of £7.6 to find from its capital budget. Clearly the Council is working to reduce this potential liability both by seeking to raise additional contributions from funders and also to reduce the costs contained in the current projected costs. However this sum, even at this level, is substantially smaller than returning the contributions of

the other funders to date and that option would still leave the Council with an unfinished building.

- 4.2 It also needs to be stated that there remains a number of risk around these cost figures. Particularly that a significant proportion of the current increase in costs is down to the prolongation of the build programme. The longer the programme to complete is then the costs increase.

5. Strategic Plan references

- 5.1 The project is identified as a key project contributing to the objectives of the current strategic plan. The Plan is currently being reviewed and public consultation is to be carried out on the Councils new priorities going forward.

6. Risk Management implications

- 6.1 At present CBC and the other funders of the project are considering the mitigation measures necessary to reduce the risks associated with the project. Some of these measures associated with the costs of the project are outlined within this report. Attention has also been paid to the governance of the project and the client team capacity going forward. CBC has agreed to appoint a client Clerk of Works to be based on site and the funders have agreed to fund a client Project Director (Completion co-ordinator) for the remainder of the project.

7. Other Standard References

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

