

Executive Scrutiny Committee

A meeting of Executive Scrutiny Committee was held on Monday, 29th July, 2019.

Present: Cllr Mrs Sylvia Walmsley (Chairman), Cllr Chris Clough (Vice-Chair), Cllr Chris Barlow, Cllr Pauline Beall, Cllr Julia Cherrett, Cllr Carol Clark, Cllr Ian Dalgarno, Cllr Kevin Faulks (substitute for Cllr Ken Dixon), Cllr Lynn Hall, Cllr Tony Hampton, Cllr Eileen Johnson (Substitute for Cllr Evaline Cunningham), Cllr Mrs Jean O'Donnell, Cllr Maurice Perry, Cllr Tony Riordan (Substitute for Cllr Laura Tunney), Cllr Norma Stephenson O.B.E, Cllr Mick Stoker (Substitute for Cllr Paul Kirton), Cllr Matthew Vickers,

Officers: Julie Danks (Interim Managing Director), Paul Dobson (Project Manager - The Globe), Margaret Waggott (Assistant Director, Administration, Democratic and Electoral Services), Judith Trainer (Team Leader, Scrutiny and Electoral Services), Julie Butcher (Chief Solicitor), Michael Henderson (Governance Officer), Garry Cummings (Director of Finance and Business Services), Beccy Brown (Director of HR, Legal and Communications), Gary Laybourne (Design Services Manager), Andrew Barber (Audit Manager)

Also in attendance: Cllr Robert Cook (Leader of the Council), Cllr Nigel Cooke (Cabinet Member for Regeneration and Housing), Cllr Luke Frost, Cllr Julia Whitehill, Cllr Mick Moore, Cllr Bill Woodhead, Cllr Clare Gamble, Cllr Ted Strike, David Glenwright (Operations Director – Driver Project Services North), Nick Corrigan (Director, Willmott Dixon Construction Limited)

Apologies: Cllr Evaline Cunningham, Cllr Ken Dixon, Cllr Paul Kirton, Cllr Laura Tunney

ESC 19/19 Welcome and Evacuation Procedure

The Chair welcomed those present to the meeting and highlighted the Evacuation Procedure.

ESC 20/19 Declarations of Interest

There were no declarations of interest.

ESC 21/19 Meeting Procedure

The Chief Solicitor presented the proposed procedure for the meeting, which would be followed, subject to the Chairs discretion.

The Chair confirmed that all the potential actions, detailed in the procedure, would be available to the Committee.

RESOLVED that the proposed procedure be noted.

ESC 22/19 The Globe

Members had been provided with a report that set out details of a call-in relating to a decision taken by Cabinet, at its meeting held on 27 June 2019. This specific decision was:-

that, subject to funding being made available by Council, the allocation of £6.5m be agreed to progress completion of the Globe restoration project to enable completion by late 2020 and recommend to Council that additional prudential borrowing of £6.5m be approved at a cost of £325k per annum.

It was explained that the call-in form, signed by seven members of the Council, suggested the decision taken by Cabinet had not been in accordance with the following principles of decision making, detailed in the Council's Constitution:

- An explanation of what options had been considered and giving the reasons for decisions;
- Proportionality (i.e. that the action must be proportionate to the desired outcome);
- Due Consultation and the taking of professional advice from officers.

It was noted that the Cabinet Members, Officers and representatives from organisations associated with the Globe project that the call in form had requested to be in attendance, were present.

To assist the Committee with its consideration of the matter Members had been provided with the Following Documents:

- Call-in form
- Decision Record
- Response Paper from Globe Project Director

In accordance with the meeting procedure the spokesperson for the members who had called the decision in, Cllr Matthew Vickers, explained the reasons for call-in. This could be summarized as:

- All Members wanted the Globe to be successful, but a great deal of residents' money had been committed to the project and there was no guarantee that more wouldn't be requested.
- Members had been asked to make a decision, to borrow a further £6.5 million, with very little information provided.
- Members had not been provided with access to one of the business plans associated with the project.
- Willmot Dixon had been used via the SCAPE framework but what other options were considered?
- there was lots of expensive expert advice and assessments sought but the problems associated with the project had not been foreseen. Had there been a failing in the advice provided?
- why was the Council having to fund the additional £6.5 million, itself? Had the liability of other partners been looked at?
- what assurance could be given that the £6.5 million would be the final request for additional funding.
- Decisions needed to be proportionate and the cost of this project had to benefit the Borough accordingly and give good value for residents' money.

The Chair allowed other members who had signed the call-in to speak and this could be summarized as follows:

- residents were concerned at the increasing costs associated with this project.
- members had been given very little information on which to base a decision.
- other partners should contribute to the project

The Chair asked the Director of the Globe Project, Mr Paul Dobson, to present the report that provided a response to the call-in.

Members noted the 6 Cabinet decisions that underpinned the decision, taken by Cabinet, on 27th June 2019:

- February 2011 – Cabinet decision to support the regeneration of the Globe
- June 2014 – Cabinet decision for SBC to step in as accountable body for Heritage Lottery Funding.
- March 2016 – Cabinet decision to undertake an SBC-led £7.8million redevelopment scheme for the Globe
- July 2017 – Cabinet decision to move to a new approach to the project to deliver a different and larger scale project for a larger capacity live music and comedy venue in partnership with ATG
- March 2018 – Cabinet decision to support additional investment to support a revised commercial operating model for the Globe
- December 2018 – Cabinet decision to support additional investment required to address the structural problems which were discovered to be worse than expected
- June 2019 – Cabinet decision [the subject of the call-in] to support additional investment to fund the final capital phase as the impact of the final detailed tendering process and the impact of the essential stabilisation works in early 2019 were costed and conclude that the previous December 2018 estimates were not sufficient.

Members were provided with details of other key events leading to the June 2019 report to Cabinet and Council:

March to May 2019 - The completion of the urgent structural stabilisation works enabled a full 'buildability' review and tendering process to be carried out. This involved engagement with over 100 specialist sub-contractors on how the agreed designs could be delivered in light of the structural stabilisation works, which fed into Willmott Dixon's work on a Preliminary Agreed Maximum Price (AMP). This was subjected to a detailed due diligence exercise by SBC's independent cost advisor, Driver Group.

As Driver Group's due diligence work on the Preliminary AMP drew to a conclusion, the Globe Project Director briefed the Chief Executive and Interim Managing Director on escalating cost issues on May 15, followed by a briefing with the Cabinet Member for Regeneration and Housing on May 17.

4 June 2019 - The Council received Driver Group's review report on Willmott Dixon's Preliminary AMP. The report found that additional funding of around £6 million would be needed to complete the project.

The Cabinet Member for Regeneration and Housing and Project Director considered alternatives, including putting the project on hold. Pausing the project would accumulate further costs, while certainty on funding was needed in order to ensure that any works embarked upon could be completed.

A pause would also delay the realisation of the economic benefits a restored Globe was expected to bring to the Borough, once fully operational – up to 200,000 visitors per year and an annual estimated visitor spend of £18million. It was considered that the economic case for the project remained very strong even when the increased cost was factored in.

The final Driver's report was available 17th June 2019 and an urgent Cabinet and Council process was initiated to seek approval for the funding, alongside a review led by internal audit.

Following presentation of the response report Members of the Committee were given the opportunity to ask questions of the Cabinet Members, Council Officers, Drivers Group and Willmott Dixon representatives who had been invited to the meeting. A summary of responses has been provided below:

- the first time there was certainty that costs could not be contained within the financial envelope was 4 June 2019, though an exact amount was not known at that time and further work was needed with regard to identifying what business critical work had to be undertaken.
- expert consultants associated with the project had been funded by, and with the approval of, the Heritage Lottery Fund. Significant structural issues had only been identified once the building had been stripped back.
- in terms of the original scheme and delays around it, it was pointed out that the Council was not in the driving seat for the project until March 2016. Subsequently, in 2017, the project changed and became much bigger, attracting significant Heritage Lottery Funding and a world renowned venue operator in the Ambassador Theatre Group (ATG).
- the business case had significantly changed, in 2017, to the one identified in 2011. The post July 2017 project was of a much larger scale.
- Council involvement on the Board of Trustees, in 2013, was to create a governance structure eligible to receive grants. Jomast was the lead at this time.
- Jomast's active involvement in the original project had ended due to commercial reasons.
- the Council's focus on the project was not to achieve commercial return but was assisting with the regeneration of the Borough. The Economic Impact Assessment, provided to the Committee indicated that, as a conservative

estimate, the Globe was anticipated to generate £18 million annual visitor spend. There was a profit sharing agreement with ATG but any funding via this route had not been built into the MTFP but would be reviewed in year 3 of the Globe operation.

- ATG was confident that the venue would be profitable and had signed a 25 year lease on the back of this confidence. It was anticipated that there would be around 200,000 ticket sales per year.
- members noted that 153 High Street was integral to the project, as the toilet and bar facilities, needed for the Globe project, could not be provided within the Globe building itself, therefore 153 High Street was critical in this regard.
- the Cabinet Member for Regeneration and Housing indicated that, during the time this project had been part of his portfolio, he had been fully briefed at every stage. He considered that members had been provided with sufficient information and in a timely manner.
- it was explained that an earlier study, undertaken as part of the original project in 2011, had estimated £3.5 million visitor spend. The £18 million visitor spend related to the larger scale project agreed in July 2017 and was based on the lowest quartile. Actual spend could be much higher.
- ATG's business case was commercially sensitive and was subject to a non disclosure agreement.
- officers had been made aware of the need for additional funding at a Project Team Meeting and minutes of this and other meetings had been made available to Internal Audit as part of its work, resulting in a report to be considered by the Audit and Governance Committee. Driver's headline report was provided on 4th June with its final report provided as a supporting report to the report considered by Cabinet and Council on June on 27th June 2019.
- the Globe Project had been managed by the most senior Officers of the Council, using a defined set of roles and responsibilities which mirrored those contained within the Project Delivery Framework. However, elements of the management and monitoring had been outside of the framework, as the Globe Project was unique and the delegations reflecting this position, were agreed by Cabinet in 2017. There was no evidence that the current position would have been different if the delivery framework had been fully followed. These issues were considered in detail, within the Internal Audit report being presented to the Audit and Governance Committee.
- the Council had taken advantage of SCAPE framework rates before they increased in May 2017. Willmot Dixon had a fixed fee representing a 1.75% profit level. If the Council had waited the contractor would have had a fixed profit level of 2.25%.
- the current Economic Impact Assessment was in the process of being updated and would be presented to Cabinet at a future date. The decision taken by Cabinet and Council were, however, based on the current Economic Assessment. It was indicated that some work around potential visitor spend would be done in the higher quartiles. Members noted that it was anticipated

that much of the visitor spend would be new and was not a consequence of a shift in how disposable income was being spent locally. The offer from the Globe would involve visits from outside the area and overnight stays.

- Willmott Dixon used local companies/trades where possible, with 60% within 10 miles of the project and 80% within 20 miles. Willmott Dixon had a commitment to benefit the wider local community.

- it was noted that there were penalty clauses in the proposed AMP contract and as the project progressed more risk moved towards Willmott Dixon. It was suggested that it would be useful to articulate this to the public.

- in response to a number of queries about increases in costs members were provided with more information relating to the additional £6.5 million needed to deliver the revised and larger Globe project.. This information included details of the additional costs associated with resolving the buildability of the scheme, due to the structural problems, the resulting changes to the Mechanical and Electrical (M&E) design and a revised roof solution, to reflect the final outcome of the structural repairs and to accommodate the revised M&E design. An increase in the steel required to support the new roof structure and ensure the structural revisions following repair were not compromised. Additional costs associated with providing handrails (including specialist heritage railings) resulting from the structural alterations and full tanking/water proofing of the theatre and requirements of prevailing safety standards were also included.

- in response to a specific question, the Willmott Dixon representative, Nick Corrigan, indicated that he was 100% certain that he and his Team were aware of the challenges but could deliver the project on time, and in budget. Prior to completion of the design and engagement with the supply chain he would have had very little certainty around this.

- it was confirmed that Willmott Dixon's 'buildability' review and tendering process was completed in May 2019. Drivers had undertaken due diligence and value engineering during the tender process, and this continued into June. The Driver report of 4th June provided a headline summary only and the final report was received later. Taking account of the Council's Constitution and relevant legislation, the earliest Cabinet could have met to consider the issue was 26 June, the day before Cabinet's scheduled meeting.

- Members noted that everything that could have been surveyed had been surveyed, but some issues could have only been detected once the building had been 'stripped back'.

- £4.5 million was the maximum grant available for the project from the National Lottery Heritage Fund, as an additional £500k had already been provided following a request for additional support.

- it was not anticipated that 153 High Street would impact on ARC or the Georgian Theatre. It wouldn't be used independently when the Globe was in use and would mainly be used for pre event drinks, toilets, bars to support the operation of the Globe..

- the Leader of the Council confirmed that no project was a bottomless pit but

explained that the Globe Project was a key part of repurposing the High Street and it was important that it succeeded.

- Internal Audit had undertaken a review and its recommendations would be taken on board. Mazars, the External Auditors, had had sight of the report and had not raised any concerns.

- It was confirmed that all contracts had appropriate liability clauses, which would be applied if necessary.

- it was noted that the Agreed Maximum Price contract would be available for signature within 48 hours of clarification of the Cabinet decision, following final due diligence.

Once members had concluded asking questions and gathering information the Committee adjourned for 30 minutes.

The Committee reconvened, to consider the information it had gathered, and arrive at a decision.

The Section 151 officer was called to answer questions and he repeated previous written advice to the Committee that the Cabinet decision, subject to the call in, was not contrary to the Council's Policy Framework, or approved MTFP, and should not be referred to Council.

A vote was taken and it was carried that the Committee would not be referring the matter to Council.

There was a brief discussion around the information the Committee had gathered and, in particular, the Economic Impact Assessment and the accuracy of the projected £18 million visitor spend.

It was suggested that the Cabinet decision had been undertaken in accordance with decision making principles and it was moved that no further action be taken.

A vote was taken.

RESOLVED that no further action be taken.