

AUDIT & STANDARDS COMMITTEE ADDENDUM

2.00PM, TUESDAY, 23 JULY 2019

MAIN HALL, PORTSLADE TOWN HALL

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ADDENDUM

ITEM	Page
6 MEMBER INVOLVEMENT	3 - 8
To consider the following matters raised by councillors:	
(c) Letters: to consider any letters;	
i. School Transport from Councillors Wares and Mears	
ii. Valley Gardens Phase 3 from Councillor Wares	

Geoff Raw – Chief Executive
Brighton & Hove City Council

2nd July 2019

Dear Geoff

We are submitting this letter under Council Procedure Rule 23.3 to be included on the agenda for the Audit and Standards Committee meeting of 23rd July 2019.

We respectfully request that Audit and Standards Committee commission an Audit report for consideration by the Audit and Standards Committee or such other relevant Committee regarding matters relating to the proposed transport contract for children with special educational needs and disabilities and vulnerable adults.

Our primary reasons for this request include, but are not limited to, the following: -

1. Policy, Resources and Growth Committee (PR&G) authorised the procurement of a transport framework on 11 October 2018 that despite the Procurement Advisory Board (PAB) expressing a desire for a Dynamic Purchasing System (DPS), the report recommended against a DPS. A DPS is now been adopted.
2. The adoption of a DPS, including the appointment and retention of external consultants to deliver a DPS are contrary to the decision of PR&G but were progressed utilising Urgency powers following agreement of the Leader of the Council and the Chair of Children, Young People and Skills Committee (CYP&S). No attempt was made to convene a Special PR&G Committee or an Urgency Sub-Committee.
3. Despite several requests for the financial details supporting a Business Case that presumably exists to justify a DPS, little has been provided and despite requests for details on the procurement process and contract award of the external consultants, none has been provided.
4. In several email exchanges between the Undersigned and Officers, rather than concerns being allayed, more questions, discrepancies and issues have arisen or remain outstanding. All emails would obviously be made available to Audit officers.

From recent emails we remain concerned of several matters. Firstly, there appears to have been no attempt to follow the proper procedure to obtain Member approval of a proposal that otherwise should have gone to Committee for consideration. Consequently, there are concerns, issues and matters for public record that are not contained on any public record save for emails that might otherwise be subject to Freedom of Information requests.

Secondly, there appears to be discrepancies in advice being offered such as compliance with standards and an apparent lack of dialogue with other departments in the formation of standards and contract conditions.

Thirdly, there has been no business case put forward justifying the adoption of a DPS or any financial, procurement or contract detail, despite requests for it, relating to the appointment of external consultants to deliver a DPS contrary to the recommendations of PR&G. Whereas delegated authority was given to officers by PR&G to procure a contract, that was in respect to a framework contract and not a DPS; pursuing a DPS and the appointment of consultants to deliver it, appears ultra vires.

Fourthly, from comments made at various Committees such as Licensing, it appears that consideration is being given to bringing transport services in-house. It appears that by adopting a DPS such fundamental change to the way the service could be delivered may be possible. A change to bring such services in-house should be subject to proper Committee reports and debate and not an extension of utilising Urgency powers.

Fifth, by committing to change from the agreed transport framework to a DPS it appears there are now previously avoidable risks to the proper delivery of the service that will negatively impact children with special educational needs and disabilities and vulnerable adults.

As the Committee charged with overseeing compliance with the code of Corporate Governance, a key aspect of which includes appropriate adherence to the constitutional decision-making processes, we would urge the Committee to commission this report so that it can either satisfy itself that everything is being done properly or that any shortcomings are addressed.

Yours sincerely

Cllrs. Lee Wares and Mary Mears

Agenda Item 6(c)ii

Geoff Raw – Chief Executive
Brighton & Hove City Council

2nd July 2019

Dear Geoff

I am submitting this letter under Council Procedure Rule 23.3 to be included on the agenda for the Audit and Standards Committee meeting of 23rd July 2019.

I respectfully request that Audit and Standards Committee commission an Audit report for consideration by the Audit and Standards Committee or such other relevant Committee regarding matters relating to the Valley Gardens Phase 3 (VG3) project.

My primary reasons for this request include, but are not limited to, the following: -

1. In the report dated 7th February 2019 to the Environment, Transport and Sustainability Committee (ETS) several references were made (paras 1.2, 7.1, 7.7 as examples) to funding from the Local Enterprise Partnership (LEP) specifically either stating that £6.0m from the LEP had been secured and/or was subject to a funding agreement. This was further reinforced by the Chair of ETS who in answer to questions from the public advised that "The council's Business Case.....has achieved the release of the 6 million pounds" (minutes dated 19th March, para 63.22, page 7). In further answer to a public question about LEP conditions the Chair advised "We have received some communication from the LEP and are studying that in detail and we will be making our comments back to them" (minutes dated 19th March 2019, para 63.12 page 5).

The report and comments, that influenced Member debate and decision-making process on the substantive item to progress VG3, sought to express or strongly imply that funding had been secured and that the LEP's communication was somehow "business as usual".

The reality of the situation as known to the Administration prior to the Special ETS Committee sitting on the 7th February 2019 was that the Council had only secured funding in principle and that the actual decision to fund was down to the LEP's Investment Committee (IC) that to this day, has yet to convene to consider granting funding (or not) and has not set a date to do so. Further, it has subsequently come to light that the LEP correspondence referred to was in fact a letter expressing specific conditions on the Council that had to be satisfied before the funding agreement could be signed subject still to the IC granting the funds. I understand there is further

correspondence in existence with the LEP questioning the Council's responses to the conditions.

Further, during the 25th June 2019 ETS Committee it was acknowledged that funding had not yet been granted and that correspondence with the LEP had not been shared with ETS Members save only for information that the Administration considered necessary for Members to be aware of such that they could make the "correct decision".

My concern is that the decision on the 7th February 2019 may be unsafe due to the Administration portraying information in such a manner and not sharing information with ETS members that may otherwise have resulted in a different outcome or enabled amendments and/or Notices of Motion to be tabled to reflect the true position as at 7th February 2019.

2. The report dated 7th February 2019 and during discussion at the same ETS Committee (and subsequently thereafter on numerous occasions, including at later ETS Committees) the Administration has briefed that any delays to the decision would risk the LEP funding due to a draw-down date of March 2021. Para 7.17 of the 7th February 2019 report is offered as an example where it states "any significant delay would be a critical project risk in terms of financing the project given the need to drawdown the LGF funding by the end of March 2021".

In recent correspondence produced by the LEP they have confirmed that there is no "hard deadline" and that subject to certain conditions, they could for example consider "Capital Swaps".

My concern is that by continuously reinforcing the so-called critical risk deadline, Members might have been compelled to making decisions that they otherwise might not have. It would be reasonable to presume that the Council, having been the recipient of many LEP grants awards, would be aware of how the LEP would consider funding and should have included the options in the reports and in answer to subsequent questions.

3. VG3 is being "contained" to the original project boundary. However, as the project has developed, in ensuring that "preferred option 1" can actually be delivered it has become necessary for "sub-projects" to be created. For example, this relates to major junction works at Duke's Mound (DM)/A259 and consideration of reversing previous Traffic Regulation Orders (TROs) to allow right turns onto the A259 west of the Aquarium roundabout. Such sub-projects are presently being progressed independent of the VG3 project notwithstanding that absent them being done, VG3 as presently proposed will fail. Officers in Committee have confirmed that VG3 and DM/ TRO changes are inextricably linked.

Irrespective of the Waterfront Project Enabling Works (WFP) being considered to fund DM, this appears to mask the true cost of VG3 and would demonstratively alter the Business Case that the Council presented to the LEP. It is likely the financial cost/benefit ratio would be negative.

My concern is that to enable VG3 to progress, the entirety of the project impact and cost is not being consolidated and that Members and the LEP have no over-arching perspective of the project or ability to judge its true financial/social/economic/environmental impact. Further, residents and businesses in the expanded project boundary area have not been party to any consultation with the Administration confirming on the 25th June 2019 that it will not allow a consultation regarding DM.

4. VG3 preferred option 1 that is progressing to detailed design stage was developed following the agreement of certain design principles, traffic studies and the feedback from a public consultation. However, preferred option 1 is a fundamental revision of the design offered for public consultation that now includes DM, the addition of a 5th traffic lane on the east side of the Old Steine (south bound bus route) and the relocation of the dedicated cycle lane to the west side impacting event space planning and design.

This revised scheme has not had the benefit of any environmental impact studies (nor did the original), has had no traffic modelling applied and has no assessment of traffic displacement; in ETS Committee officers advised that they did not know or understand how displaced traffic would function or disperse. Further and notwithstanding these seismic amendments, there will be no public consultation.

My concern is that the present design, not having the benefit of any traffic and environmental assessments and public involvement, cannot possibly be assessed as either being a “good” or “bad” solution. It is impossible to assess the impact on the original Business Case and it is impossible to judge the views and feedback of stakeholders. The project has morphed into something substantially different and should be subject to the same tests and scrutiny as the original designs and principles.

5. During October to November 2018 the Administration conducted a public consultation of which the results were the primary driver behind the present preferred option 1 that is progressing to the detailed design stage.

Because of that consultation, significant public disquiet has arisen as to the notification of that consultation and the subsequent dismissal by the Administration of a public petition requesting further consultation.

Further, the consultation questionnaire itself appears to be flawed in that rather than seeking unfettered opinion, it asked specific questions such as has the design improved cycling, walking and accessibility provision. Such questions it appears were designed to solicit a positive response as opposed to canvassing opinion. In addition, in reporting the results to the 7th February 2019 ETS Committee, the Administration sought to highlight responses that supported the scheme (albeit the questions were contrived) and under-play responses that were negative such as most respondents objecting to the removal of the Aquarium roundabout.

My concern is that the consultation thus far conducted was biased in its presentation and remains unsound in that subsequent public opinion is being ignored given that the Administration is filtering out negative responses without due and proper regard. This is further amplified given the project expansion discussed above and the substantial changes to the design that have now occurred. Failure to involve stakeholders in a full and comprehensive manner is to deny public opinion, subvert the democratic process and potentially lead somebody to conclude that the consultation was mere “tick boxing” rather than a genuine exercise.

It is conceded that the Administration is proposing to consult on the TRO related to VG3. However, it appears to have used this position to suggest to the public that there is further consultation in such a manner that will allow additional stakeholder engagement on the scheme whereas the reality is that the TRO consultation is on the technical aspects of, for example, where double yellow lines or taxi ranks might be positioned as opposed to the overall scheme itself.

As the Committee charged with overseeing compliance with the code of Corporate Governance, a key aspect of which includes appropriate adherence to the constitutional decision-making processes, we would urge the Committee to commission this report so that it can either satisfy itself that everything is being done properly or ensure that any shortcomings are addressed by the relevant committee or officer.

Yours sincerely

Cllr. Lee Wares