

Minutes of Cabinet

**Wednesday 28 September 2022 at 3.30pm
at Council Chamber, Sandwell Council House**

Present: Councillor Carmichael (Chair);
Councillors Piper, Hartwell, Hughes and Padda.

In attendance: Councillors Fenton and Simms.

Also present: Kim Bromley-Derry (Managing Director Commissioner), Simone Hines (Director of Finance), Surjit Tour (Director of Law and Governance and Monitoring Officer), Alice Davey (Director of Borough Economy), Tony McGovern (Director of Regeneration and Growth), Lisa McNally (Director of Public Health), Elaine Newsome (Service Manager – Democracy), Matthew Huggins (Interim Service Manager Parks and Grounds), Suky Suthi-Nagra (Democratic Services Manager).

176/22 Apologies for Absence

Apologies for absence were received by Councillors Ahmed, Hackett, Rollins, Moore, E M Giles, Shackleton and Taylor.

177/22 Declarations of Interest

There were no declarations of interest.

178/22 Minutes

The minutes of the meetings held on 20 July and 17 August 2022 were approved as a correct record.

179/22 **Additional Items of Business**

There were no additional items of business to consider.

180/22 **Q1 Budget Monitoring 2022/23**

The Cabinet Member for Finance and Resources presented the Q1 Budget Monitoring 2022/23 position as at 30 June 2022.

The overall projected outturn position for the General Fund was an overspend of £2.129m.

The overall projected net directorate outturn variance, excluding the Housing Revenue Account, was an overspend of £2.097m following the use of reserves.

At the end of 2021/22, £154.971m was held in earmarked reserves and three new reserves had been created as part of the budget setting process for 2022/23 which increased the opening balance to £164.703m. During the year, it was projected that £36.911m of these balances would be used leaving a remaining balance of £127.972m. A significant proportion of the use of reserves is the Business Rates S31 grant reserve, which was maintained due to timing differences in the accounting treatment for business rates income.

Approval was sought for an additional payment of £0.5m to Sandwell Children's Trust and a number of budget virements.

The Chair of Safer Neighbourhoods and Active Communities Scrutiny Board, on behalf of the Vice Chair of Economy, Skills, Transport and Environment Scrutiny Board, highlighted that in 4.7 of the report – Common Wealth Reserves was a new pocket of reserves as we had just had the games here in the West Midlands. If Sandwell did not have the funds from the games, what funds would be used?

The Cabinet Member for Finance and Resources stated that this reserve was set up from underspends as at 2021/22; the Leadership team had agreed it could be used to fund some marketing for the Commonwealth Games along with other work taking place on the Commonwealth Games' legacy.

Reason for Decision

Section 151 of the 1972 Local Government Act required the Chief Financial Officer to ensure the proper administration of the council's financial affairs. Budgetary control, which included the regular monitoring and reporting of budgets was an essential element in discharging this statutory responsibility. The recommended treatment of the year end variances supported the financial sustainability of the council.

Alternative Options Considered

There were limited alternatives to the recommendations included in this report. Cabinet could decide not to allow the proposed use of reserves by directorates, but this would increase the projected overspend and result in a further reduction in the council's general fund balance.

Agreed:-

- (1) that the financial monitoring position as at 30 June 2022 be noted and referred to the Budget and Corporate Scrutiny Management Board for consideration and comment;
- (2) that an additional payment of £0.5m to Sandwell Children's Trust be approved to fund the costs for high cost placements as well as recruitment and retention issues;

- (3) that the following budget virements above £1m in line with the revised delegated limits for Cabinet Members and Directors, be approved: -

| Virements above £1m for Cabinet Approval | £'000 | £'000 |
|---|--------------|----------------|
| ASC - Removal of target budget for Market sustainability & Fair Cost of Care as received as a ASC grant | | (1,247) |
| Resources - Removal of target budget for Market sustainability & Fair Cost of Care as received as a ASC grant | 1,247 | |
| | | |
| TOTAL | 1,247 | (1,247) |

181/22

Proposal to Declare the Whole of Sandwell as a Smoke Control Area

Consideration was given to proposals to declare a boroughwide Smoke Control Area in Sandwell following public consultation. Approval was also sought to replace the existing 51 Smoke Control Areas and ensure that all properties in the Borough were subject to the same legal requirements in relation to the prevention of smoke from building chimneys.

In response to questions raised by the Chair of the Safer Neighbourhoods and Active Communities Scrutiny Board, on behalf of the Chair of the Health and Adult Social Care Scrutiny Board, the Cabinet Member for Adults, Social Care and Health highlighted that the proposed changes, including what fuels could be used or sold, had been widely communicated to residents. The “Ready to Burn” logo on certified fuels would ensure that they were easily identifiable for customers and retailers. A further promotion would take place if the changes were approved by the Council. Enforcement would be taken by following the steps set down in the Regulators Code (Section 23, Legislative and Regulatory Reform Act 2006). These steps would begin with warnings and advice but would progress through to fines for individuals or even prosecution for retailers. The positive response to consultations and to subsequent media promotion suggested that people in Sandwell clearly understood why this was needed and that adherence to the policy would be high.

Reason for Decision

The Council has a legal duty to assess local air quality and where necessary take appropriate action to protect the health of those living and working in the Borough. The declaration of a borough-wide Smoke Control Area was just one of a range of measures that Sandwell Council can implement to help reduce the exposure of all its communities to the harmful smoke emissions created by domestic solid fuel burning.

Sandwell currently had 51 separate Smoke Control Areas (SCA), by extending the SCA to cover the whole of the borough all neighbourhoods would be protected against harmful smoke emissions, at present homes and businesses in approximately 4/5ths of the borough could still legally burn unauthorised fuels (i.e. wood and coal) in non-exempt appliances and on open fireplaces. A borough-wide SCA would address this inequality.

Alternative Options Considered

Continue with Existing Smoke Control Areas

To continue with Sandwell's 51 Smoke Control Orders means that differing legal requirements would remain for exempted properties compared to other parts of the borough. This was inequitable and would result in mixed messages and potential greater levels of non-compliance by those in existing smoke control areas who consider themselves unfairly penalised. There was not envisaged to be any legitimate reason for objection.

Non-exempt solid fuel burning stoves and open fireplaces had a negative impact on internal and external air-quality and had a significant burden in terms of health costs, both short and long term. If domestic burning in properties across Sandwell continued unchecked and unregulated the impact could negate the technological gains made through cleaner vehicle technology, home energy efficiency and controls of industrial processes.

It was envisaged that the use of solid fuel burning stoves and open fireplaces would increase with rising energy prices. At a time when households were facing financial hardship, it is easy to accept wood and coal burning as the cheap solution.

Air pollution was already impacting negatively on our economy and health, but if we allowed the increased burning of unauthorised fuels and appliances it would come with a high price tag in terms of health care both now and in the future.

Agreed:-

(1) that the results of the public consultation on the Proposal to Declare a boroughwide Smoke Control Area be received;

(2) that the Council be recommended to approve Sandwell MBC 'Declaring' the whole Borough of Sandwell as a Smoke Control Area (SCA) under the Clean Air Act 1993 and replace the existing 51 Smoke Control Areas and ensure that all properties in the Borough are subject to the same legal requirements in relation to the prevention of smoke from building chimneys.

(3) that subject to Resolution (2) above, the Director of Public Health be authorised to revoke the existing 51 Smoke Control Orders and making a single Borough-wide Smoke Control Order, with the Smoke Control Area coming into operation on the date specified in the Order which will not be earlier than six months from the date of confirmation.

182/22

Sandwell Children's Trust – Contract Review

The Cabinet Member for Regeneration and Growth, in the absence of the Cabinet Member for Children and Education, presented the Sandwell Children's Trust Contract Review which detailed the revised contractual key performance indicators. It was highlighted that the previous Ofsted rating of "inadequate" had now improved to "Requires Improvement to be good".

Reasons for Decision

The Service Delivery Contract (SDC) between the Council and Sandwell Children's Trust went live on 1 April 2018. The total contract period was for 10 years with an option to exercise a break after 5 years of operation.

The SDC included a requirement for the Trust to produce an annual review each year and a Contract Review at the end of year 4 of operation. There was a joint requirement on the Council to also review the contract at the end of year 4.

On the completion of the Contract Review process, a recommendation must be made to the Secretary of State on whether a Break Notice should be served, and children's social care functions brought back under the direct management of the Council.

The Secretary of State would make the final decision on the serving of the break notice, considering the recommendations of both the Council and Sandwell Children's Trust.

Alternative Options Considered

An alternative option would be to recommend to the Secretary of State that the service delivery contract is ended, and that children's social care functions return to the direct management of the Council.

Agreed:-

- (1) that the Cabinet, as the decision maker for the Council, in its capacity as sole Member (shareholder) of Sandwell Children's Trust (SCT) a private company limited by guarantee and employer of SCT for the delivery of services pursuant to a Service Delivery Contract (SDC) made between the Council and SCT dated 1 April 2018:-
 - a) formally receives the Contract Review Report

- b) notes the progress made to date by Sandwell Children's Trust in delivering services as set out in the Contract between the Council and the move from being judged as inadequate to requires improvement to be good.
- c) agrees the recommendations detailed in the contract review:
 - i) does not recommend to the Secretary of State that the break clause is invoked
 - ii) authorises the Director of Children and Education, in consultation with the Chief Executive of the Council and the Cabinet Member for Children and Education, to agree with Sandwell Children's Trust revised contractual key performance indicators, to commence on 1st April 2023
 - iii) The requirement to achieve a judgement of 'Good' as per the ILACS framework be revised from within four years of contract commencement (March 2022) to the next standard ILACS inspection by Ofsted (within three years of the previous inspection).

183/22

School Organisation Plan 2021-2026; results of consultation and approval to publish

Approval was sought that the 'School Organisation Plan 2021–2026', in accordance with the statutory obligation placed upon the council under the School Standards and Framework Act 1998, be published.

The Chair of Safer Neighbourhoods and Active Communities Scrutiny Board, on behalf of the Vice Chair of Economy, Skills, Transport and Environment Scrutiny Board, questioned why the School Organisation Plan makes no provision for a contingency plan for new intakes from abroad (refugees).

The Cabinet Member for Regeneration and Growth, in the absence of the Cabinet Member for Children and Education, stated that Section 4.3 of the School Organisation Plan, 'Migration', does reference that "when planning the level of school places in an area, a threshold of up to 10% has traditionally been considered appropriate to allow for migration where possible". In addition, "a surplus of between 5 and 8% across all schools in a LA area is considered acceptable by the DfE to manage in-year demand". Also, for the primary phase the council's target is 5%. Capital funding allocated to each LA to specifically provide for the provision of new school places is based upon the LA's projections for future demand for school places using existing school population data and expected future trends in population growth. The trend for International New Arrivals is a factor considered within those projections. For both the recent Afghanistan and Ukrainian resettlement programmes, the council unfortunately could not plan for such events occurring. However, with the strategic aim to maintain a minimum of 5% surplus of school places across the Borough, this was seen by the DfE to be an acceptable strategy to provide for inward migration during an academic year.

Reasons for Decision

The Council was required to approve a School Organisation Plan in accordance with the statutory obligation placed upon the council under the School Standards and Framework Act 1998.

Alternative Options Considered

This was a requirement placed on the council by the School Standards and Framework Act 1998. There was no other option available.

For at least the last 12 years, the Authority had responded to an unprecedented and significant growth in the birth rate, inward migration and retention levels. Pupil place planning and capital investment had responded to the challenges the growth had presented to the school sector. However, as the birth rate started to ease, but the level of inward migration continues to fluctuate, there was now a need to plan for future provision.

The option to do nothing was not a viable option for the council in fulfilling its statutory obligation to provide sufficient school places.

Agreed that the 'School Organisation Plan 2021–2026', as now submitted, be approved, in accordance with the statutory obligation placed upon the council under the School Standards and Framework Act 1998.

184/22 **Stock Condition Surveys**

Approval was sought to authorise the Director of Housing, in consultation with the Director of Finance, to prepare tendering documentation and to procure one or more contractors, in accordance with The Public Contract Regulations 2015 and the Council's Procurement and Contract Procedure Rules, to work on behalf of the Council, to undertake stock condition surveys to our Housing stock.

Reasons for Recommendations

Approval was sought to procure, award and enter into contract with the successful contractor(s) to undertake stock condition surveys to continue the substantial investment in the Council's housing stock.

Alternative Options

To continue using the SCD we have to inform investment programmes.

This option was ruled out because it was felt that the over reliance on cloned data results in a low accuracy level of the current data.

To undertake the surveys in-house.

This option was ruled out because the Council did not currently have the internal resources available to undertake the significant volumes of stock condition surveys required to meet the recommended 50% of our stock. However, once this commission had been concluded the Council intended to plan and programme a rolling programme of stock condition surveys through internal resources and ensure that the Council's stock condition data was no more than 5 years

old, to ensure compliance with the forthcoming Regulators reportable item.

Agreed:-

- (1) that the Director of Housing, in consultation with the Director of Finance, be authorised to prepare tendering documentation and to procure one or more contractors, in accordance with The Public Contract Regulations 2015 and the Council's Procurement and Contract Procedure Rules, to work on behalf of the Council, to undertake stock condition surveys to our Housing stock;
- (2) the Director of Housing be authorised to award the contracts, as referred to in Resolution (1) above, to the successful contractor(s);
- (3) that the Director – Law and Governance and Monitoring Officer be authorised to enter into or execute under seal any documentation in relation to the award of the contracts;
- (4) that any necessary exemption be made to the Council's Procurement and Contract Procedure Rules to enable the course of action referred to in Resolution (1) above to proceed.

185/22 Improvement Plan Progress

Consideration was given to the progress made against the Improvement Plan up to 4 August 2022.

Progress had been made across all areas with slippages in some areas. The Cabinet received feedback from the Budget and Corporate Scrutiny Management Board following consideration of the Improvement Plan at their meeting held on 22 September 2022. The Audit and Risk Assurance Committee would also receive the report on 29 September 2022; any recommendations or comments would be noted and reported back.

The Chair of Safer Neighbourhoods and Active Communities Scrutiny Board, on behalf of the Vice Chair of Economy, Skills, Transport and Environment Scrutiny Board, questioned why the report did not include the Combined Authority as partners of the Council.

The Leader of the Council stated that the Improvement Plan contained a theme focusing on Partnerships and Relationships. This theme had a workstream on Sandwell's Regional and sub-regional presence. This contained a set of actions to ensure that opportunities for Sandwell were being maximised through the Council's participation in key regional and sub-regional bodies (including the Combined Authority, and Black Country LEP). The LGA were conducting a follow up Corporate Peer Challenge visit in October 2022 and the CA were included in the list of stakeholders for this visit. The Corporate Peer Challenge will include a consideration of whether there has been a shift to the council focusing more externally. The review findings would help to capture our progress in this area. As part of the assurance process around the Improvement Plan, Grant Thornton and Cipfa were also conducting follow up reviews. The Improvement Plan would be refreshed following the outcomes of these 3 external review visits.

In addition, it was confirmed that guidance would be issued to report authors to include this information. In addition, Scrutiny Members could request this information from report presenters to aid scrutiny's consideration of the breadth of consultation.

Reasons for Decision

The Value for Money Governance Review was undertaken as part of the external auditor's role to provide assurance on the council's arrangements for securing economy, efficiency and effectiveness in its use of resources. As the report includes statutory recommendations the council had a legal obligation to respond appropriately.

The Directions issued by the Secretary of State were a statutory requirement and the council had a legal obligation to respond appropriately. Failure to do so would likely result in further intervention measures.

Reviewing progress against the Improvement Plan enabled senior officers and members have oversight of delivery, and take corrective action, as necessary.

Alternative Options Considered

There were no alternative options to consider.

Agreed:-

- (1) that progress against the Improvement Plan up to 4 August 2022 be received;
- (2) that the Improvement Plan Risk Register be received;
- (3) to receive the changes made to the Improvement Plan;
- (4) that the recommendations and comments made by Budget and Corporate Scrutiny Management Board following their meeting on 22 September, be noted and any comments or recommendations made by Audit and Risk Assurance Committee at their meeting on 29 September to be reported to a future Cabinet meeting.

186/22 Performance Management Framework – Q1 Monitoring

Consideration was given to the progress made on developing the Corporate Performance Framework and the Strategic Risk Register.

Council approved a corporate Performance Management Framework (PMF) on 12 April 2022, to address the recommendations of the Governance Value for Money Review by Grant Thornton and as a key element of the Council's Improvement Plan.

Since April, the corporate PMF had been further refined, built into business processes and performance monitoring information had been gathered for Q1 of 2022/23.

Reasons for decision

The Directions issued by the Secretary of State, including the requirement to have a performance management framework in place, were a statutory requirement and the council had a legal obligation to respond appropriately. Failure to do so would likely result in further intervention measures.

Alternative options considered

The council had various options on what type of performance management framework to establish. Our approach had been developed through understanding the needs of the organisation and drawing on best practice from other local authorities. As we continue our improvement journey, the PMF would evolve to meet our changing requirements.

Agreed:-

- (1) that the progress made on developing the Corporate Performance Management Framework be noted;
- (2) that the Q1 monitoring reports for Performance Management Framework be approved;
- (3) that the Strategic Risk Register, as now submitted, be noted.

187/22

Exclusion of the Public

Resolved that the public and press be excluded from the rest of the meeting to avoid the possible disclosure of exempt information under Schedule 12A to the Local Government Act, 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006, relating to the financial and business affairs of any person, including the authority holding that information.

Council new build homes on land at Hawes Lane, Rowley Regis

Approval was sought to authorise the development of affordable rent council homes on land at Hawes Lane, Rowley Regis with circa 15 homes as part of the new strategic approach to provide more and better housing in the borough.

Reasons for recommendations

This project intended to deliver new Council-owned affordable rented properties on a council-owned site being a mix of bungalows, houses and apartments all being built to M(4)2 accessible and adaptable standards.

Alternative options considered

As part of the appraisal process the following options were considered:

Option A – Dispose of the Site on the Open Market

Option B – Work in partnership with a Registered Provider Partner with the assistance of Homes England to build new affordable homes for rent.

Option C – Leave the site undeveloped.

Agreed:

- (1) that approval be given to appropriate approximately 4186.2 m² of land at Hawes Lane, Rowley Regis from the General Fund to the Housing Revenue Account for housing purposes with the accounts being adjusted accordingly and to develop the site with circa 15 new affordable rent council homes, as shown for identification purposes on Plan No. SAM/22920/004;
- (2) that the Director of Finance be authorised to allocate adequate resources from the Council's Housing Revenue Account and the Right to Buy one for one receipts to deliver the scheme;

- (3) that in connection with Resolution (1) and (2) above, approval be given to authorise the necessary steps for the delivery of the proposed project, including:
- a) the Director of Regeneration and Growth in consultation with the Director of Finance and the Director of Housing be authorised to prepare tendering documentation and subsequently procure, in accordance with any statutory regulations and the Council's Procurement and Financial Regulations;
 - b) execute any requirements in accordance with the Homes England Delivery Partner Dynamic Purchasing System (DPS) framework including appointing a contractor/contractors to develop, on behalf of the Council, the proposed housing scheme; to enter into or execute under seal any financial agreement in relation to the Homes England grant on terms and conditions to be agreed by the Director of Finance;
 - c) that any necessary exemptions are made to the Council's Procurement and Contract Procedure Rules to enable the course of action referred to b above to proceed;
 - d) subject to a, b and c above, the Director – Law and Governance and Monitoring Officer be authorised to enter into or execute under seal any documentation in relation to award of the contract and/or development/partnership agreement, Homes England developer status, licence, undertaking, framework joining agreement, any consents or applications required for Planning or Highways appertaining to the delivery of the scheme and any other agreements with the procured contractor(s) and with the Homes England, as may be deemed necessary to facilitate development of the site with a housing scheme as described in below

on terms and conditions to be agreed by the Director of Regeneration and Growth;

- e) the Director of Regeneration and Growth in consultation with the Director of Housing and the Director of Finance be authorised to accept a tender of up to 10% above the approved estimated costs as a contingency to mitigate uncertain market conditions and inflationary cost uplifts.
- f) subject to practical completion of each property the Director of Housing be authorised to manage and let the properties built in accordance with the Council's housing allocation policy.
- g) that the following action points identified within the financial appraisal of the funding application by Strategic Finance, be implemented to reduce the risk to the Council:
 - That Cabinet consider the alternatives and are satisfied that the proposal to construct the new build homes will meet the Council's objectives in the most appropriate manner.
 - That a process is developed to prioritise the development of sites against pre-determined criteria and alternative options for achieving the Council's housing objectives within each locality.
 - That the site is appropriated from the Council's General Fund to the Housing Revenue Account at a value of £0.406m and the corresponding adjustment to the Capital Financing Requirement made to reflect the appropriation.

Meeting ended at 4.00pm

Contact: democratic_services@sandwell.gov.uk