

Crawley Borough Council



Report to the Audit and Governance Committee

25th June 2014

Maidenbower Pavilion – Review of Lessons Learned on Capital Projects

Report of the Audit and Risk Manager – FIN 337

1. Purpose

- 1.1 The Committee has a responsibility to review the Internal Audit Progress report to ensure that action has been taken by relevant managers on risk based issues identified by Internal Audit. In addition, to fulfil its functions, the Committee receives the annual report from the Audit and Risk Manager.

2. Recommendations

- 2.1 The Committee is requested to receive this report and note progress to date.

3. Reasons for the Recommendations

- 3.1 The Committee has a responsibility to ensure that action has been taken by relevant managers on risk based issues identified by Internal Audit.

4. Background

- 4.1 At the Audit and Governance Committee meeting held on 12th March 2014, Councillor Walker requested that the Committee consider a number of issues relating to the construction of Maidenbower Pavilion, and that if at this meeting the Committee were minded to agree to this request, the intention would be to bring a report covering those issues to the June meeting of the Committee.

Such a request was agreed and a Briefing Note, produced by the Head of Finance, Revenues and Benefits on this matter was circulated to the Committee and following a detailed discussion on all issues and concerns raised, the Committee conveyed its view that a report should be submitted to the Committee's June meeting.

The Committee considered the overall scope of the report to be submitted and it was felt that this should also include an assessment as to the extent to which the lessons learned (as identified in the report on the Pavilion to the Committee's March 2012

meeting) had been put into effect on subsequent major construction contracts. The following was resolved:

(1) That a report - the scope of which is to be developed and coordinated by the Head of Finance, Revenues and Benefits (in consultation with the Chief Executive and Members of the Committee), be presented to the next meeting of the Committee on 25 June 2014.

(2) That appropriate Officers be asked to attend the meeting referred to in (1) above to assist in dealing with any questions asked at that meeting.

4.2 Scope of Work Undertaken

A brief was drawn up by the Head of Finance, Revenues and Benefits as attached at Appendix A to this report.

It was agreed that Internal Audit would look at the more general questions about the extent to which the lessons learned identified in the March 2012 Audit and Governance report have been acted on in subsequent projects relating to Maidenbower Pavilion and identify a number of major projects that commenced after the Maidenbower Pavilion report in March 2012.

This has been done by drawing on those projects we have already looked at, those included in the 2014/15 internal audit plan and such others as were considered relevant. The outcome of the work of internal audit is shown below at section 4.3 onwards. In addition, the then Head of Property addressed the points 2 – 5 of the brief and the outcome of this work is shown below at section 4.5 onwards.

4.3 **The extent to which the lessons learned identified in the March 2012 Audit & Governance report have been acted on in subsequent projects**

In order to provide assurance on this, we reviewed a number of capital projects started at the time of or after the initial report was issued, as shown below.

I am satisfied that the lessons learned from the Maidenbower Pavilion project are being acted upon in capital projects.

The Audit and Risk Section is involved in larger capital projects on an ongoing basis, for example Worth Park Restoration Project, and would identify any areas of weakness in a timely manner. The Section will also be involved in Crawley Museum and Ifield Millpond during this financial year. During this financial year, no findings have been identified.

The main areas where the lessons learned are apparent are:

- Named project sponsor, at Director level and named Project Manager;
- Dedicated accountant;
- Sign-off of the project specification or evidence that it has been discussed and agreed;
- Roles and responsibilities are clear.

Project	Comments
Worth Park Restoration Project	Lessons learned have been applied to this current, ongoing project that will complete in December 2016.
Crawley Museum	Lessons Learned have been applied to the tendering process at the start of this project which is not due to formally begin until April 2015.
Ifield Millpond	Lessons Learned have been applied to the tendering process at the start of this project which is not due to formally begin until May 2014 and will not complete until April 2015.
Ifield West Community Facilities	Lessons Learned have been applied to the tendering process at the start of this project which is not due to formally begin until May 2014.
Breezehurst Drive New Homes	Lessons learned have been applied to this current, ongoing project that will complete in March 2015.
Brunel Place New Homes	Lessons learned have been applied to this current, ongoing project that will complete in March 2015.
151 London Road, Langley Green	This project is on hold awaiting a Planning application to be re-submitted.
Broadfield Barton	Some Lessons Learned have been applied to this project that is due to start in the Summer 2014. The project has not yet reached the stage of specification agreement and formal sign off.

4.4 Maidenbower Pavilion – Social Club

A further request was made by the Director of Community Services for Internal Audit to review a number of areas relating to the Social Club in response to concerns raised by Councillor Walker on 18th April 2014.

These concerns and queries are as follows:

1. Whether a Service Level Agreement (SLA) is in place to cover the 2 year licence of the Social Club to the Maidenbower Park Community Club which includes the suitability of the individuals managing it;
2. The lack of Crawley Borough Council oversight on Committees;
3. Whether the measures suggested in the Audit and Risk Manager's report of February 2012 have been put in place for Maidenbower Pavilion.

These areas were discussed with the then Head of Community Services and the Asset Manager and their responses are documented below.

Service Level Agreement

Asset Manager's Response

The Asset Manager has confirmed that a service level agreement is not in place as it would require a high level of supervision to be properly effective, and to ensure compliance. This is not a resource Crawley Borough Council has.

They further confirmed that a service level agreement is either a separate agreement to a lease or licence, or it can be as an appendix or schedule. If the latter lease/licence route is used, there are often no effective powers to enforce the service level agreement as this would likely contain mainly positive obligations upon the lessee or licensee, i.e. to do this, or have this etc. which are not actionable by law.

If one were to have a stand alone agreement, there would have to be levels of tolerance to non compliance, evoking different level responses, with potentially cancellation of the arrangement only in the event of a flagrant breach. The point regarding resources was re-iterated.

The Asset Manager considers that management responsibilities need to be more clearly defined, such that all parties know what their responsibilities are, and what they are not, and any conflict is mitigated. This is something that the Council is seeking to put in place with the occupiers.

Head of Community Services' Response

The Head of Community Services advised that as an independent voluntary organisation, paying rent to access the premises, it would be inappropriate to set performance standards for the Group. Such agreements are more commonly used where organisations are invited to tender against a specification and usually the Council will pay a fee for the services. Notwithstanding the roll of the voluntary organisation, the Head of Community Services echoed the comment that the Council is not resourced to provide detailed oversight of such organisations.

Crawley CVS, who the Council funds to offer advice to voluntary sector groups, supports and works with the Social Club. Despite earlier the CVS are now satisfied that the Social Club has made progress/broadened the number of trustees in place etc.

It is noted that after the first year in operation (June 2014), the Crawley Borough Council licensing section will be requiring evidence that the group is operating as a bona fide operation and have been operating in a sound way. Their premises/alcohol license can be revoked by the Council if this is found not to be the case, as it would for all of the licenses granted by Crawley Borough Council.

Crawley Borough Council Oversight on Committees

As part of their constitution, MPCC invite Ward Councillors to attend their Committee meetings as observers. There is a need to find a balance which allows the Group to manage their ongoing affairs while providing reassurance to the Ward Councillors that the activities are being professionally managed.

Measures

In the report of the Audit and Risk Manager on Maidenbower Pavilion, issued as a final report in March 2012, and included in background papers at the meeting of the Audit and Governance Committee on 14th March 2012, a number of issues were raised in respect of confirming that value for money was being achieved from the Pavilion as a whole. In respect of the effectiveness, the following was included in the report:

Effectiveness

At the planning stage of a project, it is necessary for clear objectives to be set so that the success of the project can be assessed. It is stated in the Project Start up Form that the expected outcome of the project is for the project to be completed by the end of July 2011 and provide 'improved value for money, higher quality of service to the Community and collaboration with other parties within the Community once finished'.

It is too early to determine the impact achieved, i.e. that the objectives of the project and the needs/aspirations of the community have been met. However, it is necessary for management to consider how they intend to measure effectiveness, to ensure that the project has met its stated aims.

This may take the form of quantitative measures, for example monitoring usage of the facilities by number of people attending, by number of bookings taken, by turnover in the café, by improved financial position, or qualitative measures, such as using feedback form and questionnaires to confirm if the Community feels that they are being provided with a higher quality of service and that the facilities have been opened up to a wider section of the Community.

Suggested Action

The Head of Community Services should agree the measures to be used to assess the impact achieved and how this will be recorded and reported.

In addition to the requirements of the Licensing section at Crawley Borough Council, the following requirements have been agreed between the Head of Community Services and the MPCC Chairman being the expectations of the Council for Maidenbower Park Community Club in the coming months with a review date of six months hence:

1. **Incorporation:** To become an incorporated group (eg as a charity or a co-operative). This will require the Group to make an application to the relevant governing body (eg Charities Commission) and I am sure Crawley CVS can support and advise on the process for this.
2. **Accounts:** To produce audited accounts which enable the Members and wider stakeholder interests to understand the financial standing of the Club. This should be broken down into the Social Club activities and budgets relating to community programmes such as the children's holiday programmes or the pre school breakfast club etc. You indicated at the meeting that this is in hand and will be produced for the AGM.
3. **Committee Meetings:** To ensure a schedule of main governing management committee meetings. It would be for the Group to determine the frequency of these but as discussed, a monthly meeting would seem appropriate. Again, it would be for the Group to determine the specific agenda items but it would seem appropriate for the following to be included; a financial report, reports of any sub-committee's or working groups and information regarding any key decisions to be taken by the Committee. As discussed this would seem the appropriate meeting to invite the ward councillors to, to enable them to have an overview and understanding of the future activities and governance of the Group.
4. **New Committee Members:** To be open, positive and welcoming to potential new committee members and to consider how any interested party can play a positive and active role in helping to shape the direction of the Club moving

forward. Again, you indicated that you are working with Crawley CVS to ensure the process for the AGM is fair and democratic.

5. **Self Assessment:** Once the new management committee is elected after the AGM, to ask Crawley CVS to work with the Group to undertake a self assessment of their current skills and capacity. Linked to this, to work with Crawley CVS to agree an action plan to respond to any skills or capacity issues identified through the self assessment.
6. **Communications:** To ensure all communications from the Group (to include directors, staff, volunteers and members) are professional and present a positive image of the Club to the wider community. This related to comments made via social media and I am pleased you have confirmed that all parties associated with the Club have been told about the importance of presenting a positive and community focussed image.
7. **Action Plan:** To produce and agree a 'Year 2' action plan which sets out the priorities for the Group for the coming year including the community programmes and events they anticipate delivering.

The Audit and Risk Manager will bring a report to the Audit and Governance Committee on 24th September to update them on progress made in implementing the agreed actions.

4.5 Head of Property's Response

The Maidenbower element has a number of related areas to address, see 4 questions below with responses:

1. To report further as to why an inappropriate traditional build contract was used rather than a design and build contract.
 - a. The type of contract used for this project was the intermediate form of contract, i.e. one where the building contractor is employed by the Council to construct a building according to the drawings and specifications prepared by the Councils design team.
 - b. In contrast, a design and build contract is a method used to deliver a project in which the contractor takes on the detail design (the level of detail can range from a simple written brief to the level of detail required for a full planning application). This form of contract is used in more complex designs or where the client wishes to reduce the level of risk both in cost and project delivery. Generally the more risk passed to the contractor the more the tender will cost.
 - c. Traditionally the Council use two forms of contract; on larger £500,000+ and more complex projects the Design and Build form of contract is preferred. In this case due to the way the scheme grew and that the intermediate form of contract was intended from the start, and the design team were appointed to develop the scheme it was not considered inappropriate to continue. The final brief of the project fell between this cross over ie was of the scale where both forms were appropriate.

- d. The company, who are acting in the capacity of Quantity Surveyors, advised the Council on 6th July 2010 that they had been preparing the tender documents for Maidenbower Pavilion on the basis of using the Intermediate Form of Contract with drawings and Schedule of Works and that changing at 'this late stage' would result in the company having undertaken an amount of abortive work for which they need to recover costs.
 - e. In addition, the design team advised the Council that if they were required to carry out any changes to the design or specification of Maidenbower Pavilion, it would be necessary to charge additional fees to cover this. It had been decided that the Council had gone too far down the traditional tender route for it to be cost effective to change at that time.
 - f. However, the intermediate form of contract whilst costing less does carry a number of risks to the Council. For example if the working drawings are not accurately drawn or unexpected circumstances are found on site one the work starts (such as uneven floors after a wall has been removed), the cost of any additional work must be borne by the client.
 - g. The main problems appear to be that the scope of the works changed (i.e. kitchen requirements as originally teas and coffee now fully catered for hot food) incompleteness of the tender, specification and design documentation and that the tender documents (specification and drawings) were incomplete.
2. To report further on the extent of the excess spoil created under the contract, how it was dealt with, why it wasn't accurately assessed within the contract and the financial implications.
 - a. The 3G pitch was originally to be a separate contract and based on an indicative design and specification the detail design element was the responsibility of the contractor. The contract specified that the spoil was to remain on site. The spoil was retained on site due to the excessive costs that would have been incurred by its removal
 - b. The timetabling of the two contracts would have required two separate contractors on the same site at the same time, which would have caused problems due to the limited room available for plant, machinery and materials. The 3G pitch was therefore merged with the works on Maidenbower Pavilion.
 - c. Included within the 3G drawings, was the provision of a mound (referred to as a bund) to be placed at the end of the tennis courts, parallel with the existing mound, in addition to the one that was already on site. The spoil removed from the 3G pitch site was to be used here.
 - d. Although the contractors design met the contract requirements, the contractors' design involved an increased amount of spoil to be removed and when excavation works were approximately half way through, an Instruction was given to raise the finished level and avoid any further excavation and spoil arising.
 - e. This is because the finished level was set to be the same as the tennis courts but the amount of spoil that had to be stored (in bunds) on site was found to be in excess of that anticipated.

- f. As the increased amount of spoil would have been detrimental to the height and look of the existing mounds it was decided to place the excess in bunds along the back of the field. This has resulted in a relatively small extra cost to the Council of £2,337.35, being the cost of the Contractor moving the spoil further than anticipated and the time taken to build the bunding.
 - g. The contract allows the sum of £4,143.95 for the landscaping of the 3G pitch, including the formation of bunds
3. To report on the security aspects of the design of the building and in particular whether it was inadequate in relation to both the height of the building and CCTV cameras. The report to include details of what advice was obtained regarding these aspects.
- a. The contract was to provide additions to an existing building and therefore the height of the roofs were fixed as it was a single story building. The roofing material was also as existing and not intended to be replaced.
 - b. The majority of the Councils community / pavilions are of a single story design and only a few building (where there is a known vandalism or security problem) have a different roof finish.
 - c. The extensions were designed to hinder access and security cameras were included to deter and capture any inappropriate activity.
 - d. The design team were unaware of any previous vandalism or security problems on the existing building.
 - e. I am unaware of any security audit being undertaken.
4. To report on the fitness for purpose of the building in view of the damage to the skin surface being done by cricket and other balls when they hit the outside of the building.
- a. The new external fabric of the building was designed and specified to improve its thermal properties and being an external material to withstand an element of rough treatment considering that it is near a sports and play area.
 - b. We do not believe that the punctures and damage to the fabric is from cricket balls bouncing / ricocheting off the wall.
 - c. The fabric of the new structure was not designed to withstand deliberate acts of vandalism, with the sole intent to penetrate the outer layer.

5. Background Papers

5.1 None.

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ENDS

Audit & Governance Report – Suggested Scope

There are two elements:

- general questions about the extent to which the lessons learned identified in the March 2012 Audit & Governance report have been acted on in subsequent projects
- specific issues relating to the construction of Maidenbower Pavilion

Regarding the general questions it is suggested that the scope is:

5. To identify a number of major projects that commenced after the Maidenbower Pavilion report in March 2012.

Internal Audit to carry out this aspect of the work drawing on those projects they have already looked at, those included in the 2014/15 internal audit plan and such others as they feel are relevant.

The Maidenbower element has a number of related areas to address:

6. To report further as to why an inappropriate traditional build contract was used rather than a design and build contract.
7. To report further on the extent of the excess spoil created under the contract, how it was dealt with, why it wasn't accurately assessed within the contract and the financial implications.
8. To report on the security aspects of the design of the building and in particular whether it was inadequate in relation to both the height of the building and CCTV cameras. The report to include details of what advice was obtained regarding these aspects.
9. To report on the fitness for purpose of the building in view of the damage to the skin surface being done by cricket and other balls when they hit the outside of the building.

The aspects 2-5 above to be covered by Property Services. Officers from Property Services able to deal with any questions will need to attend the meeting.

DRR/19-Mar-14