

Surrey Heath Borough Council
Performance and Finance Scrutiny Committee
9 March 2022

Monitoring Officer's Report on the Public Realm Project

Portfolio Holder: N/A
Head of Service: N/A
Report Author: Gavin Ramtohal, Monitoring Officer
Key Decision: No
Wards Affected: N/A

Summary and purpose

At the Executive Committee meeting held on 25th May 2021, the Executive resolved to instruct the Monitoring Officer to undertake a review of the circumstances leading to the increased costs of the Public Realm project. The purpose of this report is to report the Monitoring Officer's findings and recommendations to the Performance and Finance Scrutiny Committee.

Recommendations

The Performance and Finance Scrutiny Committee is advised to note the findings of the Monitoring Officer and consider the following recommendations. It has been noted that officers have established internal operational monitoring arrangements that review spend on capital projects on a monthly basis to ensure that they are on time, on budget and meeting the standards set out in the specification. The intention is to report to the Performance & Finance Scrutiny Committee on a quarterly basis.

- (i) Initial estimates for capital projects should consider the level of contingency depending on the likely risks. A higher contingency may be justified for construction projects involving intrusive groundworks or excavation. Projects which involve these works carry significantly more risk of additional costs due to a higher risk of additional works which could not be discovered by site inspection.
- (ii) Although delegating authority to a senior officer to manage a capital project is not unusual, and indeed can ensure greater efficiency in terms of progression, the Council should consider whether high value capital projects (i.e. multi £million projects) should be managed by a dedicated project board. It would be advisable for a finance officer to be a member with a specific function regarding budget monitoring.
- (iii) In circumstances where the Council is under a contractual obligation to make payments within certain timescales, and there is a need for additional funding, calling an extraordinary meeting of the Council should be given due consideration.

- (iv) Delivering additional training on the Financial Regulations and effective means of promoting the requirements to the Wider Management Team.
- (v) The Council's Section 151 Officer to provide quarterly monitoring reports on capital projects to the Executive and the Performance and Finance Scrutiny Committee.

1. Background and Supporting Information

- 1.1 In 2017 the Council submitted a bid to the Enterprise M3 Local Economic Partnership (EM3LEP) for £3.5M as a contribution towards the improvement of the public realm in High Street, Knoll Walk and Princess Way. The bid was successful and the Executive approved a recommendation to contribute £900k from developers' contributions and income from CIL to meet the total expected cost of the works.
- 1.2 At the February 2018 Council Committee meeting, the Council resolved to increase the capital programme to include funding of £4.4 million for the Public realm works.
- 1.3 In May 2021 the Executive was asked to recommend to Council that an additional £754,600 be added to the Capital Programme, to be funded from the Council's reserves, in order to meet additional costs resulting from Covid 19 and the discovery of unknown underground utility services. The additional works required a significant redesign of the scheme to accommodate and protect these services. It is not uncommon for the overall cost of a project to increase as a result of additional works that could only be discovered by intrusive inspection.
- 1.4 It was agreed by the Executive at the May 2021 Executive Committee meeting that the Monitoring Officer should examine the issues in more detail due to concerns raised about the amount of additional costs and the relatively late presentation to Members.

Key Issues

- 1.5 The Monitoring Officer has reviewed the relevant decisions which gave effect to the administration and management of the public realm works and the key findings are as follows.

Decision making and authority

- 1.6 At the Executive Committee meeting held in December 2017 the Executive resolved that:-
 - (i) up to £900k from current and future CIL and section 106 contributions be used on the High Street Public Realm Improvements; and
 - (ii) authority be delegated to the Executive Head of Regulatory in consultation with the Leader, to take forward the delivery of the High Street Public Realm Improvement Project.
 - (iii) RECOMMENDED to Council that a Capital scheme be approved for £4.4m for the High Street public realm.
- 1.7 It is clear from the recommendations that the Executive Head of Regulatory was authorised to manage the project and the contents of the report confirms that the project management included budget management; the purpose of the report was to:

“ delegate authority for the delivery of the project the management of the budget to the Executive Head of Regulatory in consultation with the Leader of the Council.”

Exceeding the approved budget

- 1.8 Regarding the overspend, the Council did engage the services of a quantity surveyor from an early stage in the project. The contractor engaged for this service was WH Stephens. The use of a specialist cost consultant represents industry practice as a means of ensuring cost control during the life of a capital project and scrutinising any claims by the construction contractor for additional works. The May 2021 Executive report set out the reasons for the overspend as resulting from Covid 19 and the discovery of unknown underground utility services. In relation to construction projects, particularly construction projects undertaken during the Covid-19 pandemic lockdown, these represent legitimate financial risks.
- 1.9 Regarding the reporting to members, the need for additional funding was brought to the attention of the Executive in May 2021. The Executive report contained a recommendation that Council approves an additional £754,600 from the Council's reserves in order to see the project through to completion.
- 1.10 The report also refers to the sum of money expected to be received from the Government to cover unavoidable Covid 19 related costs. The report confirmed as follows

“The Head of Finance has advised that that it was originally thought that COVID grant from Central Government for this scheme would amount to c£700,000 (sufficient to meet two-thirds of the overspend) but in the event the sum received only amounted to £331k.”

- 1.11 Accordingly, the then Executive Head of Regulatory may have been satisfied that the project could have been delivered within existing budgets. Unfortunately this was not the case and the matter was subsequently reported to the Executive together with the reasons for the increased costs. It became apparent that a greater proportion of the overspend related to the need to redesign the works and that these additional works would exceed the contingency within the existing budget. Accordingly the correct action was taken to report the matter to the Executive with a recommendation to Council to increase the capital budget.

Reporting requirements

- 1.12 Although it appears the Executive Head of Regulatory acted correctly within the delegations authorised by the Executive and authorised expenditure, the potential overspend should have been reported earlier to assist with risk management, transparency and to seek approval for a supplementary estimate. Under rule 2.7.4 of the Financial Regulations, the Executive may only increase an estimate within the Capital Programme by the lesser of 5% or £10,000. Above these limits, the relevant section of the Financial Regulations is section 2.4.1 which confirms as follows.

“When an expenditure budget might be overspent or income budget not met, the Executive Heads of Service or Head of Service must consult the Executive Head of Finance and then give advance notice to the Leader/Executive, explaining both the reasons for and means of financing any variation. Any overspending or income shortfall must be covered within annual estimates, or by a supplementary estimate.”

- 1.13 The May 2021 Executive report did not provide sufficient advance notice to the Executive or Leader and section 2.4.1 applies even when budgets can be supplemented by additional monies from further grants or virements from other budgets. Although prior to May 2021, the Executive Head of Regulatory appeared satisfied that the project could be delivered within the authorised capital budget (albeit with the assistance of a covid grant) section 2.4.1 applies when an expenditure budget “might” be overspent.

Contractual considerations

- 1.14 Since commencement of the project, the Council has been under contract to make payments to the construction contractor within certain timescales. This is a legal obligation and reinforced by section 113 of the Public Contracts Regulations 2015 which requires payments to be made within 30 days of receiving an undisputed invoice. It is fortunate in this case that the Contractor has been flexible on the timings of payments and the Council has not incurred additional costs as a result of this.
- 1.15 Given the circumstances, it is reasonable to ask whether a decision by the Executive and full Council could have been sought at an earlier date, to mitigate the risk of not meeting contractual obligations for payment for the works completed. Potentially it may have been prudent to consider scheduling an extraordinary Council meeting to seek earlier approval for an increase in the capital programme; if such a meeting was scheduled, the Council may have been in a position to make payments at an earlier stage.

2 Reasons for Recommendation

- 2.1 As set put in the report.

3 Proposal and Alternative Options

- 3.1 Not applicable.

4 Contribution to the Council's Five Year Strategy

- 4.1 Not applicable.

5 Resource Implications

- 5.1 As set out in the report.

6 Section 151 Officer Comments:

- 6.1 As set out in the report.

7 Legal and Governance Issues

- 7.1 As set out in the report.

8 Monitoring Officer Comments:

- 8.1 As set out in the report.

Annexes

None

Background Papers

None