

## **Wiltshire Council**

### **Overview and Scrutiny Management Committee**

**7 January 2014**

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#### **Report of the Highways and Streetscene Contract Rapid Scrutiny Exercise (Balfour Beatty Living Places - BBLP)**

##### **Purpose of report**

- 1 To present the recommendations of the BBLP rapid scrutiny exercise.

##### **Background**

- 2 At the Council meeting on 9 July 2013 Cllr Jeff Osborn moved the following motion which, following a lengthy debate, was defeated.

That Council asks the Environment Select Committee to:

- undertake regular and close monitoring of this element of the new contract with Balfour Beatty Living Places;
- consider what lessons can be learned from how this contract was implemented to assist with planning future similar contracts and
- make recommendations as appropriate to the Executive'.

- 3 As a member of the O & S Management Committee, Cllr Osborn subsequently submitted a request to the Committee for it to undertake a scrutiny exercise on the Balfour Beatty Living Places (BBLP) contract. The request was considered at the meeting of the Committee on 5 November; to enable members to discuss the matter from an informed position, the executive had been invited to comment on the request and to supply any supporting information. A report was received from the Cabinet member and was discussed at the Committee meeting. Following debate, the Committee agreed that:
  - a) A rapid scrutiny exercise would be conducted on the content of the report submitted by the Cabinet member to enable greater clarity of the concerns raised;
  - b) A progress report would be presented to the Environment Select Committee after the winter, addressing operational performance;
  - c) The Environment Select Committee conduct a full scrutiny exercise in June 2014, after the first full year of operation of the new contract.

##### **Membership**

- 4 The following members undertook the rapid scrutiny exercise:  
Cllr Jeff Osborn (chairman)  
Cllr Terry Chivers

Cllr Gordon King  
Cllr Linda Packard  
Cllr Pip Ridout  
Cllr John Walsh.

## **Witnesses**

- 5 Evidence was taken from:
- Cllr John Thomson, Cabinet member for Highways and Streetscene and Broadband
  - Cllr Philip Whitehead, Portfolio holder for Highways Contract
  - Carlton Brand, Corporate Director
  - Parvis Khansari, Associate Director, Highways and Transport
  - Peter Binley, Head of highways Asset Management and Commissioning
  - David Bailey, BBLP Business General Manager

## **Information provided by witnesses**

- 6 Some disruption was caused at the start of the new contract due to lack of continuity of staff. This was due to six middle managers choosing not to transfer to the BBLP contract under the TUPE regulations at short notice. Under the regulations, staff are not obliged to transfer to the new employer or to give notice of their intentions.
- 7 The contract was introducing a fundamentally different way of working - bringing highways to the communities – and it was acknowledged that there had been some early disruption as a result. Two key elements were the introduction of the Community Teams and the application of the latest IT to support the service. It had been expected that these two elements would provide the biggest challenges.
- 8 The new IT systems include the introduction of the My Wiltshire App and hand held devices for all operatives. This is complex due to the requirement to ensure connectivity between different software from different companies. Development of the App is an ongoing process and improvements will continue to be made to the system as it is used. 'Clarence' will be phased out and a new number advertised. Residents can use the App directly or they can use the new free phone number, in which case customer care will input the details directly onto the App for them.
- 9 The previous contractor stopped grass cutting approximately two weeks before the end of the contract; they were only paid for the work they completed. This resulted in there being a backlog when BBLP took over. This was compounded by the lack of local knowledge of new staff, due to previous staff not transferring under TUPE. BBLP brought in the resources

needed to deal with the backlog, but competing demands had to be balanced and prioritised.

- 10 BBLP have reviewed grass cutting and identified all areas that should be cut. At the request of the rapid scrutiny members, it is understood that councillors will be provided with a list of grassed areas in their wards which are covered by the contract. Grass cutting frequency is based on the specification of the individual area. It was suggested by the Group that inadequate equipment was used to cut large areas of grass and the efficiency of this was questioned.
- 11 The contract indicates that bi-monthly programmes of work should be provided to the Area Boards. Councillors receive a list of major works in their areas but were interested to know about the smaller, local activities. Councillors were informed that they can contact their community coordinators for more information.
- 12 BBLP explained that they had good relations with the unions and that in a recent exercise two staff had been made redundant and others had moved teams. They had recruited three managers and continued to review their requirements. They use agency staff to provide flexibility.
- 13 Each community area now has its own community team (although they can be shared in an emergency). Representatives from the Community Teams plan to visit each Area Board after Christmas and provide updates. It is also proposed to visit each Area Board regularly every 6 -9 months with BBLP staff.
- 14 The Council, BBLP and Atkins meet monthly to review all projects, during which they score each other across all areas on a 1 – 10 scale (1 is poor), ie the Council and Atkins score BBLP etc; guidance is provided for the scoring. If a score is too high or too low, the scorer is obliged to comment. Scores provided for BBLP for October showed that they were scoring well in seven of the eight service areas, the weakest at 4.5 being local highways and streetscene. Members agreed that this area was of most concern as measured by complaints that councillors receive. BBLP were delivering on budget. The Group acknowledged that BBLP was performing well in the area of major maintenance on highways and larger schemes.

#### BBLP October scores by service

| <b>Service Area</b>            | <b>Score</b> |
|--------------------------------|--------------|
| Highways major maintenance     | 7.10         |
| Drainage works                 | 8.00         |
| Integrated transport           | 6.90         |
| Local highways and streetscene | 4.50         |
| Major schemes                  | 7.70         |
| Street lighting maintenance    | 7.80         |

|                              |      |
|------------------------------|------|
| Street lighting improvements | 7.70 |
| Structures                   | 6.70 |

- 15 There is good engagement at the weekly officer meetings held to review the Action List, which comprises registered concerns. Most issues have been resolved, those outstanding are IT related and will be complete by the end of the year. Some issues are due to the configuration of the Council network. Both BBLP and the Council have responsibility for IT. BBLP have procured a bespoke system for the Wiltshire Council contract. BBLP are able to purchase nationally or locally, to obtain the best product/service.
- 16 It was confirmed that the benefits outlined in Appendix A of the report from the Cabinet member were beginning to be realised. An additional potential benefit was identified, that of localisation of services.
- 17 The contract contains a number of undertakings, which are monitored to ensure delivery. One is the provision of six apprenticeships. Recruitment for the places has not yet started and a date could not be given. It was explained that it would be inappropriate to recruit until BBLP had established its employee needs. It was looking to extend its operations and this could provide opportunities.
- 18 The BBLP Performance Review provided was a 6 month 'snapshot'. The figures for 'highways major maintenance' represented total activity possible within the budget. Priority was on ensuring safe roads. 'Integrated transport' showed few schemes completed although many had been issued. Delivery is behind as there are issues around workflow, but progress is now being made. These represent many small schemes which are traditionally slow, often encountering difficulties through the consultation period. CATG projects account for approximately 25% of the programme.
- 19 Members posed a series of questions which required a response from the Legal Department. Members' questions and the subsequent responses from the Legal Department are contained in Appendix A to this report at the request of the group.

### **Views of the members of the rapid scrutiny exercise**

- 20 The portfolio holder and officers stated that they had anticipated that two areas of work would cause the most challenge and that had proved to be the case; the areas being local highways and streetscene and IT. Members concurred that these remained areas of concern and required further scrutiny, particularly as they relate to the public.
- 21 It had been felt by members that inadequate equipment was being used to cut large areas of grass. They would like to be re-assured that the most

appropriate grass cutting equipment is available, that personnel are fully trained and that productivity has improved.

- 22 It was noted that BBLP used agency staff to provide flexibility but members were concerned that the use of agency staff resulted in a lack of important local knowledge and continuity.
- 23 Members were concerned that redundancies amongst Wiltshire Council staff meant that the appropriate people were not always in post. This resulted in a shortfall of communication between the public, the Council and BBLP.
- 24 Members were also concerned that issues were reported repeatedly but that nothing appeared to be done or there was too long a period between reporting and action being taken. The Portfolio holder explained that often action was being taken but that the process could take time eg where a notice period was required because of the necessity to close a road, but it was acknowledged that feedback was not as good as it should be. Members believed that the circle of reporting/feedback must be completed and must be seen to be completed.
- 25 Members suggested that early communications about the innovations arising from the new local highways and streetscene system may have raised the public's expectations unrealistically. There was also confusion among the public and parishes over terminology eg 'parish stewards', 'community teams', 'community days'.
- 26 It was noted that no action had yet been taken in respect of recruiting the six apprentices in Wiltshire which is an undertaking within the contract. Also that BBLP indicated that the apprenticeships might arise out of work they have yet to identify or develop.
- 27 Whilst acknowledging that different area boards may require different forms of engagement, it was noted that there was inconsistency in the way Community Coordinators engaged with area boards and parishes, particularly around the provision of local work programmes and progress reports. It was felt that they should have greater visibility in some areas.
- 28 Members now have a better understanding of the aspirational working of the contract, but still have questions on the absence of default notices and the role of early warning notices.
- 29 It was felt that it would be helpful for the legal department to provide members with a summary of the key elements of large contracts (the BBLP contract comprises 700+ pages). Members were surprised that these were not routinely provided to councillors.

- 30 Members consider that worthwhile scrutiny of any contract should include the tracking of its progress from development of service specification through to award and early performance. It was felt that lessons could be learned from the case of the BBLP contract.

## **Conclusions**

- 31 Members were reassured that the contract was performing satisfactorily in seven of the eight main areas of the contract.
- 32 The local highways and streetscene element of the contract had been identified as a main area of concern within the contract, and the IT system as a concern within that; improvement must be sought in both these areas.
- 33 A fully effective reporting and feedback procedure was key to the effective operation of the local highways and streetscene contract. Members need to be convinced that an effective feedback mechanism exists in response to issues that are reported under the new system.
- 34 There was confusion over the terminology used in respect of the Community Teams and this needs to be addressed.
- 35 Members felt that the role of active local councillors was crucial in making the relationship work between parish councils, area boards, local highways and streetscene and BBLP.

## **Recommendations**

- 36 **The Rapid Scrutiny Group recommends that:**
- a) **The members who undertook the rapid scrutiny exercise meet again in March 2014 to evaluate the work undertaken on IT, local streetscene and the reporting/feedback procedure;**
  - b) **Prior to the meeting in March, the rapid scrutiny group is provided with:**
    - **up to date evidence of the effective reporting and feedback procedure;**
    - **information on the role of early warning notices and the absence of default notices, and copies of the standard clauses used in the contract;**
    - **evidence that the most appropriate grass cutting equipment is available, that personnel are fully trained to use the equipment and that productivity has improved.**

- c) **The outcome of the second rapid scrutiny exercise is reported to the Environment Select Committee to coincide with the presentation of a progress report addressing operational performance after winter;**
- d) **The Highways team undertake a well planned and publicised re-launch of the Community Team service, which should be shared with the rapid scrutiny group prior to implementation then the group should have the opportunity to assess the effectiveness of the relaunch.**
- e) **A copy of the report of the rapid scrutiny group should be sent to all councillors with a covering letter, requesting feedback from them on any areas of concern on the local streetscene aspects of the BBLP contract. Their feedback to be sent to the Scrutiny Team and collated to inform the second meeting of the rapid scrutiny group in March.**
- f) **The legal department should, in future, provide summaries of the key elements of large contracts for circulation to councillors.**
- g) **The Audit Committee should arrange for a full audit of the Highways and Streetscene contract as soon as possible, the outcome of which should be reported to the O & S Management Committee.**
- h) **The report should be forwarded to the relevant Cabinet members for response.**

### **Next steps**

37 The report will be submitted to the O & S Management Committee on 7 January 2014 for endorsement.

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### **Cllr Jeff Osborn - Chairman, Rapid Scrutiny exercise**

Report Author: Maggie McDonald, Senior Scrutiny Officer  
01225 713679 [maggie.mcdonald@wiltshire.gov.uk](mailto:maggie.mcdonald@wiltshire.gov.uk)

### **Appendices**

**Appendix A** Members' questions and responses from the Legal Department

### Members' questions and responses from the Legal Department

**Q1:** *The contract is dated 1 June 2013 but I have an email from Peter Binley dated 17 July 2013 stating that it has not yet been signed. I also have an email from Peter dated 26 September 2013 stating that it has now been signed. I understand that there were negotiations of a legal nature taking place. Exactly what was being negotiated in the period between the 1 June 2013 and the actual date the contract was signed?*

**A1:** The negotiations that were carried out after the 1 June were to do with the leases of the depot sites. The Council had included in the tender documentation forms of leases for the depots which were based on the then existing leases with Ringway. We received no comments or indication that the leases were not acceptable to BBLP until after BBLP had been told that they were to be awarded the contract. In around the last week of May BBLP sent the draft depot lease to their external lawyers (Pinsents). Pinsents raised a large number of issues on the leases immediately prior to the planned execution date (1 June) and we were told that BBLP would not execute unless and until the issues were resolved. As it turned out there were few strictly "legal" issues – the main point of negotiation was what services to the depots would be supplied free by the Council and what would BBLP pay for.

**Q2:** *What was the actual date the contract was signed?*

**A2:** The contract was fully executed on 4 September.

**Q3:** *The contract is with Balfour Beatty Living Places (LP) and is guaranteed by Balfour Beatty (BB) The guarantee does not appear to have been executed. Is there a reason for this?*

**A3:** The guarantee was executed on the same day, 4 September.

**Q4:** *LP is a £100 company and has no income or assets. What was the advantage to Wiltshire Council to enter into an agreement with LP instead of with BB direct?*

**A4:** The benefit of this sort of special purpose company is for the organisations delivering the services. It allows (in this case) Balfour Beatty plc to identify and isolate liabilities. These sorts of companies are very common in large contract and PFI arrangements (e.g. the Council's social housing PFI arrangements). The



Council has to rely on the PCG to have BB plc to stand in for liabilities that are too big for BBLP to absorb.

**Q5:** *The guarantee states in clause 1 “ Notwithstanding any other provision of this Guarantee, the Guarantor shall have no greater liability under this deed than it would have had if the Guarantor had been named as joint contractor with the Contractor under the contract” This clause maybe interpreted as the Guarantor only being liable for 50% of LP liability as it does not state “joint and severally liable”. If this is correct why was this agreed to?*

**A5:** The use of a joint liability makes BB plc totally liable under the PCG for BBLP failure to perform its obligations under the service contract. There is no question of BB plc only having a 50% liability. But what the PCG does do is give BB plc a liability which is no more than BBLP’s liability arising out of BBLP’s failure to perform or breach of contract.