

OVERVIEW AND SCRUTINY COMMITTEE

6 January 2021

Title: Report arising from recommendation 3 of A2020 Scrutiny Review on Best Value	
Report of the Cabinet Member for Finance, Performance and Core Services	
Open Report	For Information
Wards Affected: None	Key Decision: No
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Accountable Director: Hilary Morris, Commercial Director	
Accountable Strategic Leadership Director: Claire Symonds, Acting Chief Executive	
Summary The report responds to Action 3 of the 2019/20 Overview and Scrutiny Committee Key Line of Enquiry work and sets out the Council's approach to ensuring it has strategies, systems and processes in place to provide Best Value in the commissioning of services from its wholly and partly owned companies.	
Recommendation(s) The Committee is recommended to note the report in respect of best value, clienting and contract monitoring arrangements in relation to the Council's wholly and partly owned companies.	
Reason(s) The Council has been subject to significant and sustained pressures on its budget and as part of the development of a New Kind of Council, embarked on a comprehensive reorganisation of its services during 2016/17 into a commissioning and delivery model under the Ambition 2020 Transformation Programme. This reorganisation resulted in the creation of several commercial entities which were designed to operate autonomously of the Council whilst some were contracted to provide services to the Council as well as to Residents. Whilst the creation of these companies has incorporated significant changes to the way the services within them operate, successful delivery of sustainable financial outcomes are an important part of the Council's strategy to become financially sustainable over the longer term and delivery of the specific objectives for each company is also an important element enabling the Council to fully achieve its objectives as set out in the Borough Manifesto in relation to the Inclusive Growth objectives.	

1. Introduction and Background

- 1.1 As part of the work plan for 2019/20, the Overview and Scrutiny Committee examined the Ambition 2020 Programme as a key line of enquiry and have requested that Officers provide assurance to the Committee that there are systems, processes and strategies in place to ensure that the Council gets best value from the Council's wholly and partly owned companies commissioned to deliver services. This report responds to that request.
- 1.2 As the Committee is aware, the Council has been subject to significant and sustained pressures on its budget and in 2015/16 carried out a consultation with the community about the challenges facing the delivery of Council services to 2020 and as a result embarked on a comprehensive reorganisation of its services into a commissioning and delivery model under the Ambition 2020 Transformation Programme. A commissioning model means that the Council sets its strategic priorities, in the context of the available resources, and agrees a set of outcomes which reflect the needs of residents and local businesses. Services are then 'commissioned' to deliver these outcomes.
- 1.3 This reorganisation resulted in the development of business cases for the creation of a number of commercial entities. These business cases evaluated the costs and benefits, both financial and non-financial and compared these with existing and alternative options to ascertain the best future operating model. The resulting creation of several trading companies were designed to operate autonomously of the Council and were contracted to provide services to the Council as well as to Residents (where appropriate). These contractual arrangements set out the Services to be delivered and required outcomes which are aimed to support the Council in delivering its strategic objectives as set out in the Borough Manifesto.
- 1.4 Company performance against commissioned and strategic objectives, including financial and performance outcomes are monitored at several levels with the Council setting the goals and strategy through the Shareholder Agreements, Commissioning Mandates, and Business Plans, which the companies are then held to account for performance against through the Shareholder Panel, Commissioner relationships and commissioning frameworks. In practise however the effectiveness of the model is determined by the quality of relationships and communication, so we get the benefits of operational flexibility for our companies and ourselves in the context of a collaborative rather than contractual model. This is not always perfect and will continue to develop and improve as the company's and the Council mature in this new model.
- 1.5 The duty to secure Best Value forms part of the Council's statutory obligations and is the cornerstone of the Council's contract and financial rules. Best Value is secured by balancing price and quality, social value and other broader considerations to form a view as to whether a specific activity, contract or commitment provides the Council with the best outcomes for the money committed. This is not a race to the bottom to secure outcomes at the cheapest possible price. Statutory guidance sets out a general duty to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and these principles underpin our approach to best value. The services provided for which fees are payable and the principles and processes that govern the commissioning

of those services are set out below, in addition to the wider considerations relevant to determine value for money.

2 The Council's Commercial Entities

2.1 Be First

Be First (Regeneration) Ltd (Be First) was created from the Council's Regeneration and Planning Service which later incorporated Building Control. Be First was supported in its early stages with a Working Capital Loan of £4.3m which was approved by Cabinet in the 2017 Be First Business Plan. This loan has not yet been re-paid but continues to accumulate interest at a state aid compliant rate. Be First was established to deliver the real-estate development of social housing and regeneration schemes more quickly than the capacity of the Council could secure throughout the Borough. As part of its functions, Be First deliver:

- Planning services to residents and developers for which planning fees are payable (the Council retains the planning decision making function). Pre-Be First these services cost the Council £700k pa. Fees are determined in two ways:
 - Where fees and charges apply to mandatory services such as planning fees these are approved by Cabinet as part of the annual fees and charges schedule.
 - Where fees are discretionary, meaning residents and developers are able to use other suppliers these fees are set directly by Be First and these include pre-application consultations and planning promotion agreements.
- Development Management Services are provided to the Council as well as to some external clients and fees are applied according to the type of scheme being undertaken. Standard development management fees for schemes on Council-led development sites were approved by Cabinet in November 2016 as part of the business case for the creation of the company. New categories of fees agreed post that point are being assessed against industry normative levels before being approved. Schemes are individually appraised based on their total development cost (which includes any fees) before being considered for approval at Investment Panel. All schemes must meet the investment hurdles approved by Cabinet as part of the Investment and Acquisition Strategy before being approved.
- Be First also deliver Capital Programme works as part of the portfolio which transferred from the previous Capital Delivery Unit and as was the case then, fees are agreed between the Council and Be First on a scheme by scheme level according to the type of project being commissioned – there is no single fee level applied and this is considered and administered on a project by project basis.

Be First are targeted to deliver 2,748 new homes over the next 4 years which is equivalent to a medium size house builder with 78% of homes built being at affordable rent. They are currently on track to deliver the agreed number of new homes this year. As a result of this significant step change in the pace of regeneration and commercial development activity Be First is targeted, and currently forecasting, to meet the financial target as set out within its agreed Business Plan and original Business case.

The step change in regeneration is also driving skills and training opportunities with Be First's 'Skills at the Heart' ethos providing a drive to long-term, skilled jobs with better prospects for residents attributed to their construction activity. Be First currently assess the real Value of every £1 spent on construction translates into

£1.48 of added social value. 53 new full-time jobs alone were created for local residents in the three months between July and September and £17m of orders were placed with local suppliers; for instance a local concrete provider is providing all the pre-cast concrete items for Crown House.

2.2 Barking and Dagenham Trading Partnership Ltd (BDTP)

2.2.1 The Barking and Dagenham Trading Partnership was created primarily from cleaning and catering services but also took on management of the workforce of the Council's repairs and maintenance service (the DLO) who continue to be employed by the Council. BDTP deliver elements of all these services to the Council as well as to schools and other external clients under a range of different commercial terms and agreements.

- **Cleaning services:** BDTP provide cleaning services to the Council's corporate buildings in line with the service provided pre company creation. This service is contracted through a service agreement and the cost per building has not increased since the company went live in 2017. Notwithstanding, the services provided under this agreement are reviewed in light of any organisational or building changes, for instance increases in scope due to Covid or reductions in service due to rationalisation of buildings and revisions to provision are approved as part of a contractual variation process. Although not required to do so, the Company has implemented the 18/19 LGPC pay award for all staff who have historically been in the lowest paid sector. These pay increases were awarded to staff without applying an increase to the cost of the service paid by the Council – this translates not only into a fairer pay to staff who are predominantly local, but also a real time reduction in service cost to the Council;
- **Catering Services:** BDTP provide a paid for catering service direct to schools under a variety of different commercial agreements. The Council does not commission this service but as with cleaning, the company have applied the 18/19 pay award in both years for all staff in this service who have also historically been in the lowest pay sector. This service faces increasing competition to secure these contracts from other external providers who generally do not pay the LLW therefore the company rely on their ability to provide a quality service as a core partner to schools as they would be unlikely to be able to compete for these services on price alone;
- **Repairs and Maintenance Services:** The responsive and reactive repairs and maintenance service provided to the Council's tenanted and leaseholder properties is delivered by the DLO. The DLO remain Council employees on Council T&Cs, however the service they provide is managed by BD Management Services Ltd (BDMS) (a subsidiary within the BDTP Group) and monitored as a commissioned service via monthly performance meetings. Although there are areas of performance that need to be improved, between 2017-19 the number of repairs being completed per operative has improved from 345 in 2016/17 to 616. For context, the cost of the responsive repairs and maintenance programme has decreased since 2017 from £18.2m to £13.2m;
- **Management functions:** BDMS are contracted to undertake the management of the Council's DLO as a commissioned service and monthly monitoring meetings are undertaken to assess performance. This service is tasked with improving

productivity, improved first time fix rate and quicker turnaround of planned work as well as improved customer and client satisfaction of the R&M services for which the Council pays a fee. This fee is directly comparable to the cost of the service when this was delivered in-house and this has not increased since this service went live two years ago although the Company have continued to apply the national pay award for these staff which would have increased their direct costs. Under their management, the costs of the responsive repairs programme has decreased and productivity has improved with some improvements being made to the turnaround time for voids and compliance works although the service is still not yet performing at the optimum level;

- **Planned Maintenance & the Capital Programme:** As with Be First, fees are agreed between the Council and BDTP on a scheme by scheme level according to the type of project being commissioned – there is no single fee level applied and this is considered and commissioned on a project by project basis; and
- **LondonEast UK Limited:** BDTP also owns LondonEast-UK Limited (LEUK) which owns the science and technical park in Dagenham East. BDTP was given a state aid compliant loan from the Council. This loan will start to be re-paid in the next financial year following the sale of part of the land to the Council to deliver the Film Studio, as well as part of the land to UCL to deliver the Pearl research facility and the asset is already valued in excess of the original sum loaned which over time will provide a return to the Council.

2.2.2 As a company BDTP have financial and non-financial outcomes to deliver for the Council which are achieved primarily through the activities of its subsidiaries. In addition to delivering a dividend to the Council, these include improving employment opportunities for its workforce as well as improving the service. Since the company was established it has already produced a net profit from trading amounting to a cash return to the Council of £2.3m and a further forecast £1.7m from 2019/20 financial year which is not yet released as this is subject to audit. As well as delivering savings in relation to the Council's direct employment cost of the DLO delivered through initiatives such as managing down the proportion of emergency and urgent out-of-hours works the company has delivered additional savings to the Council of £1.3m.

2.2.3 BDTP are able to deliver a dividend from several workstreams, one of which is securing additional work from across the business such as increased capital programme works, which previously would have been contracted out to third parties. These works would always have included an element of private sector profit when contracted out, the only difference being that the profit is now being retained by the Council and utilised to fund much needed public services. Additional work streams that generate profit are additional cleaning and catering commissions from schools and businesses as well as other ad hoc work commissioned from the Council such as the refurbishment of the London road car park in 2019 which was delivered at a competitive price but also generated a financial return for the Council. In addition to securing new work the company generate a surplus by improving productivity, reducing waste and inefficiency and making savings through more commercial management practises. It has also reduced the costs of its support services and purchased new business technology designed to improve the operational efficiency of the company. Although not all of these improvements and new technology are live or have hard evidence to support their effectiveness yet, they are indicative of the type of commercial approach which over time should help to reduce the cost to the

business, support the company to win more non LBBB business and therefore increase the profit to the Council.

2.2.4 In addition to financial benefits the company delivers value through a commitment to local recruitment. Since the company's creation it has focused on building up its permanent workforce and in July - September of this year alone it has recruited 22 permanent employees with 18 of these being local to the borough. These factors however, also have a counter effect in that in supporting the Council's commitment to continue to pay the LLW and by honouring the national pay award it would be unable to compete for some services if they were evaluated on price alone and therefore in line with other contracted services the value provided by BDTP cannot be measured just on the basis of price.

2.3 **BDSIP LTD (BDSIP)**

BDSIP also known as Barking and Dagenham Schools Improvement Partnership is a company limited by guarantee and is owned by the Council and most of Barking and Dagenham schools who chose to be members of the company. It is a not-for-profit company. Its aim is to provide services to schools to improve outcomes for pupils. It absorbed school traded services and continues to deliver these directly to schools. The Council is both a member of the company and a commissioner of statutory and priority services, which are delivered on behalf of the Council through an annual Service Delivery Agreement. Services provided to the Council are paid for from the DSG and are monitored through commissioning frameworks which oversee outcomes. BDSIP is the only company not fully owned by the Council and does not have a financial return target to the Council.

2.4 **Barking and Dagenham Reside Regeneration Ltd (Reside)**

Reside was originally established to buy, build, let and manage affordable/shared ownership housing. It is wholly owned by the Council. It has several subsidiaries and interests in Limited Liability Partnerships also ultimately owned by the Council. In practical terms, this means that Reside or one of its companies takes responsibility for the management of the housing stock which is built by Be First. Reside's allocation policies are agreed by Cabinet, and this ensures that properties are offered to people in line with the council's allocation policy for its own housing stock. Residents are not obligated to rent Reside properties and do not pay for services other than rent and service charges. The rent levels charged to residents are set by Reside, based on the modelling which the Council carries out to ensure each scheme developed is viable. Rent rises are agreed annually by the Reside board, and these are based on government guidance and must be reasonable and in proportion to the cost of managing and maintaining the properties. Officers are currently reviewing the structure of the companies.

2.5 **B&D Energy Limited (B&D Energy)**

Again, this company is wholly owned by the council and is an Energy Services Company (ESCO). The mission of the ESCO is to help deliver the Council's strategic energy and carbon reduction objectives by creating and delivering energy related benefits for the corporate estate, housing, schools, as well as creating wider social and economic benefits for the community. It is also tasked with developing local energy expertise to support local economic development, identifying and delivering

affordable energy projects and over time delivering a financial return to the Council. The Council does not commission any services directly from BD Energy but has part funded the development of two District Heating networks following state aid compliant loans to the Company. The first of which was approved by Cabinet as part of the original investment into the Company in June 2016 and more recently in March 2019 to develop its largest network, the Barking Town Centre District Energy Network.

Since BD Energy was created it has delivered a District Energy Network to Becontree Heath which provides energy to 170 Homes and the Becontree Heath Leisure Centre. It has also been delivering heat to 381 homes at Gascoigne East Phase 1 since March 2018 and this development will be integrated into the larger Barking Town Centre network once built.

The charges for energy are set by the company and BD Energy's commitment is to deliver energy at fair prices which is indexed annually (every April) against wholesale energy costs, labour costs within the industry and cost of living. For heat prices, customers can use the Heat Trust Calculator to compare what they pay to a typical gas fired boiler. For those schemes connected to a Private Wire Network (PWN), the electricity prices are capped to the average of the best deals offered by the "Big Six" energy providers at the time of indexing.

2.6 Beam Energy

Beam Energy was not a company but was set up as a 'white label' partnership with Robin Hood Energy, an energy company owned by Nottingham City Council. This partnership was created to provide an increased range of affordable energy options to residents, without requiring the Council to set up its own independent company. Beam Energy had some initial success particularly in the pre-payment market, where residents often faced highest fuel costs. However, after the initiative was launched Ofgem introduced an energy price cap, which meant that Beam Energy (and Robin Hood Energy) lost its competitive advantage in the market, which is dominated by the 'big six' providers, who began providing lower cost tariffs. This led to financial difficulties for Robin Hood Energy, which ultimately meant Nottingham City council decided to close the company down. All customers of Beam Energy have been transferred to new providers and have had their tariffs protected in the process. There are no immediate plans to relaunch Beam Energy through an alternative provider, and instead the council will now focus on expanding opportunities to residents to improve the energy efficiency of their homes.

3. The Performance and Governance Framework

- 3.1 In order to ensure appropriate governance of the companies and regular oversight of performance against objectives the Council created a Shareholder Panel. This panel monitors performance by way of quarterly (or more regularly if required) performance reports and challenge sessions and provides oversight to the Business Plans prior to recommending these for approval to Cabinet. The Business Planning process enables the Council as the shareholder to set the strategic direction of the Companies within the context of the operating environment, confirms the ambitions as well as the strategic objectives of the Companies during the plan period.
- 3.2 Except for matters which the Council withheld its approval for, and which are set out as the matters reserved for Council approval within each shareholder agreement,

each company is run by a Managing Director or Chief Executive. The Managing Director or Chief Executive exercise all the powers of the company and are tasked with delivering the performance required, in the way they deem fit, to achieve the objectives as set out within the approved Business Plans.

- 3.3 Company performance is then directly overseen by a Company Board which is made up of a number of Executive and Non-Executive Directors. Non-Executive directors are excluded from day to day management obligations but play a key role in providing independent oversight and constructive challenge to the Executive Directors (i.e. the Senior Management of the Company). Their role is to provide assurance over the integrity of the information, the ability of the Company to deliver the shareholder objectives as well as provide assurance that the controls and systems of risk management are robust and defensible and that performance is delivered. The Council also includes the Company performance as part of its Risk Register.
- 3.4 In addition to the strategic oversight Council officers provide operational contract management oversight of the specific commissioned services which are set out within the contracts the Council has with each Company. These include contracts for the provision of cleaning services to corporate buildings, the provision of specific school improvement activities as well as contracts to deliver planning and regeneration services to specific standards to the Council and residents. The operational performance of these is overseen by the Clients of these services such as My Place, Education and Inclusive Growth. As such, there are multiple layers of challenge to the performance framework, each with a specific remit.

4. Summary and Conclusion

- 4.1 As with all competitive procurements undertaken within the Council, value for money is not simply evaluated based on price and the same is reflected in consideration of the services provided by the companies. The companies provide a business plan annually which is approved by Cabinet and as part of that consideration is given to the non-financial outcomes and commitments made to ensure each one is delivering against the wider aspirations for them and that they are helping to support the Council to deliver it's Borough Manifesto. Once the Business Plans are approved all the company performance against their plan is monitored the Shareholder Panel in the same way that contracted operational outcomes are monitored by the relevant commissioners.
- 4.2 Whilst each individual company has a business plan which sets their strategic vision and key deliverables over the plan period and are demonstrating success in delivering these individual visions, it is the inter-connectedness of the companies' plans and vision which will be a key component to the overall success of the commercialisation model over the longer term. For instance, the successful delivery of additional revenue generated by Reside can only be achieved by accelerating the Council's development programme which has only been able to be achieved through the creation of Be First. This symbiotic relationship continues into delivery of the repairs and maintenance of those properties by BDTP and in some cases the energy provided to them which will be created through the local energy networks built by BD energy. This eco-system of public sector entrepreneurialism is an important part of demonstrating value for money across the companies' portfolios which is in addition to that which has been created by the outcomes they have achieved individually

which holds both financial and non-financial benefits both for the residents and local businesses of Barking and Dagenham.

- 4.3 Whilst the creation of these companies has incorporated significant changes to the way the services within them operate, successful delivery of sustainable financial outcomes are an important part of the Council's strategy to become financially sustainable over the longer term and delivery of the specific objectives for each company is also an important element in enabling the Council to fully achieve its objectives as set out in the Borough Manifesto.

5 Consultation

- 5.1 Cabinet were consulted and approved the creation of each of the Companies on the basis of the arrangements outlined above. Cabinet continue to monitor and are required to approve each Companies' Business Plan on an annual basis.
- 5.2 The Shareholder Panel monitor the detailed performance of each Company against their Business Plan and meet with the Company Managing Directors every quarter to review performance.

6 Financial Implications

Implications completed by: Thomas Mulloy, Chief Accountant

- 6.1 The subsidiaries play an integral role in helping the Council achieve financial sustainability. Both Be First and BDTP aim to make dividend payments which feed into the Council's Medium-Term Financial Strategy. There is a monitoring programme in place to ensure this is achieved.

7 Legal Implications

Implications completed by: Ian Chisnell, Major Projects Solicitor

- 7.1 The Council has various powers to establish companies such as s4 of the Localism Act 2011 and s93 of the Local Government Act 2003, which permit local authorities to trade through companies.
- 7.2 The Council controls its companies through a shareholder agreement with the company and through the Articles of Incorporation of the company. It also has the final say in appointments to the Board of the company although under the Companies Act 2006 ss 172 and 173 the Directors of a company must promote the success of the company and act independently.
- 7.3 The Council also has power to set up limited liability partnerships and limited partnerships under s1 of the Localism Act 2011.
- 7.4 In setting up corporate entities the Council must prepare a business case and business plan setting out the proposals for those entities and they must be kept under review.

- 7.5 Under the Public Contracts Regulations 2015 trading is permitted between the Council and its companies without competition provided they meet the criteria set out in Regulation 12 which relate to control and no private sector participation.
- 7.6 Most of the Council's Companies are wholly owned, with some exceptions such as BDSIP, which is a company limited by guarantee which has members rather than shares.
- 7.7 The Local Government and Housing Act 1989 and the Local Authorities (Companies Order) 1995 regulate companies in which a local authority has an interest or control, prescribing such matters as statements as to influence or control on company notepaper.
- 7.8 The Council also has power to make loans to its companies but must bear in mind when it does so that it does not breach the Principles of State Aid which is defined as: an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities. And could take the form of grants or cheap loans.

Public Background Papers Used in the Preparation of the Report: None

List of appendices: None