

Birmingham City Council

Sustainability & Transport Overview and Scrutiny Committee

18 April 2024



Subject: Highways Maintenance and Management Services PFI – Update and Contingency Arrangements

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1 Purpose

- 1.1 To provide a further update to the Committee, following the previous briefing dated 7 March 2024 on the Government's decision on the Outline Business Case (OBC) which set out the Council's proposals for the revised Highways Maintenance PFI arrangement.
- 1.2 Please note, the information provided within this report reflects the position of the project at the time of writing (26 March 2024).

2 Recommendations

- 2.1 The Committee notes the report.

3 Confidentiality

- 3.1 As the Council is in Judicial Review proceedings (as explained below at paragraph 4), it remains extremely important that both officers and elected representatives of the Council do not express any personal views/opinions regarding the proceedings as this may compromise the Council's position. This includes anything in the public domain which may be in verbal or written format.
- 3.2 Please note that any internal documents created may also be disclosable unless they are covered by legal privilege.

4 Current Position

- 4.1 Please refer to the previous briefing for detail concerning events leading up to the DfT's decision on 30 November 2023 (DfT's decision being communicated in the "Decision Letter") in respect of the OBC.

- 4.2 Following the Decision Letter, and after taking external legal advice, over which privilege is not waived, the Council issued a letter to DfT setting out the basis of its proposed Judicial Review challenge pursuant to the Pre-Action Protocol Letter for Judicial Review (dated 11 December 2023) (the “PAP Letter”).
- 4.3 No substantive response was received from DfT to the PAP Letter. DfT requested an extension of time to respond to 15 January 2024 (the PAP Letter contained a deadline of 18 December 2023).
- 4.4 As no substantive response was received to the PAP Letter within the time permitted, the City Solicitor instructed the Council’s external legal advisers to file and serve a Judicial Review challenge at court on 2 January 2024. On 3 January 2024, the court sealed those documents and the Council’s external legal advisers sent the documents to the Government Legal Department (acting on behalf of DfT), albeit, in accordance with the Civil Procedure Rules, the documents were not deemed served until the second business day after despatch, being Friday 5 January 2024. On 8 January 2024 the court made an order requiring DfT to file its Acknowledgment of Service and Summary Grounds of Defence by 19 January 2024.
- 4.5 On 19 January 2024 DfT filed and served an Acknowledgment of Service and Summary Grounds of Defence, to which BCC responded in brief on 22 January 2024. Evidence was served at intervals thereafter.
- 4.6 A two-day hearing took place from 21 to 22 March 2024 at Birmingham Civil and Family Justice Centre. No judgement was given by the court during this time.

5 Next Steps

- 5.1 At the time of writing the Council awaits the court’s decision. Please note by the time of the Committee meeting a judgement may have been handed down and if so, a verbal update will be made by the attending officer.
- 5.2 Under Section 41 of the Highways Act 1980, Birmingham City Council as the ‘Highway Authority’ for the city, has a legal duty to maintain all adopted highways within Birmingham. Our priority therefore remains the continued delivery of statutory highway functions and services across the city, ensuring the safety of citizens and visitors across the network. We recognise that the performance of Birmingham’s network is critical for not just our city, but the entire West Midlands and we will always endeavour to do our best for the region.
- 5.3 The Council will continue to ensure the delivery of these services via the current Interim Services Contract that is delivered by Kier.
- 5.4 The Interim Service Contract has been extended since the Committee last met and is currently in place until the 31 May 2024. The Council has an option to extend the Interim Service Contract until 31 July 2024 which it expects to exercise before 11 April 2024 (i.e. by the time the Committee meets).

- 5.5 The outcome of the Judicial Review will not be known for a number of weeks, or, if successful, may require further engagement with DfT before the long-term future of the PFI is known. To ensure that the Council can continue to fulfil its statutory duty to provide continuity of services, a paper is being prepared for June's Cabinet with a request, as a contingency measure, to approve the further extension of the Interim Service Contract for up to a period of two years.
- 5.6 There is insufficient time to undertake a full procurement to appoint a long-term service provider prior to the 31 July 2024 and this proposal allows the Council time to develop and implement a robust strategy for the long-term provision of services.
- 5.7 The financial resources to be requested will align with the recently approved Council budget and the requested reduction in spend over the next two years.
- 5.8 Members will be briefed and consulted with on the Council's position and consulted with as appropriate as the position with government develops.

6 Any Finance Implications

- 6.1 Please refer to the briefing dated 21 December 2024 for an overview of the finance implications.

7 Any Legal Implications

- 7.1 Please refer to paragraph 3 above with respect to confidentiality. Failure to adhere to the guidance set out at paragraph 3 may jeopardise the Council's legal position.

8 Any Equalities Implications

- 8.1 There are no equalities implications to be considered in relation to this report at the time of writing. However, officers will continue to keep this under review.

9 Background Documents

- 9.1 Report of the Assistant Director (Highways and Infrastructure) to Sustainability & Transport Overview & Scrutiny Committee, 21 December 2023 ("Highways Maintenance and Management Services PFI")
- 9.2 Report of the Strategic Director, City Operations to Cabinet, 5 September 2023 ("Highway Maintenance and Management PFI Contract")