

Birmingham City Council

Report to Overview and Scrutiny Committee

12 June 2024



Title: Scrutiny of the integration of Greater Birmingham and Solihull Local Enterprise Partnership (GBSLEP) functions into BCC

Lead Cabinet Portfolio: Councillor Sharon Thompson, Deputy-Leader of the Council

Relevant Overview and Scrutiny Committee: Economy, Skills and Culture

Report Author: Yasmin Sulaman, Programme Champion
Place, Prosperity and Sustainability Directorate
07840 712 638
Yasmin.sulaman@birmingham.gov.uk

Authorised by: Philip Nell, Strategic Director – Place, Prosperity & Sustainability

Is this a Key Decision? Not Applicable

If this is a Key Decision, is this decision listed on the Forward Plan? Not Applicable

Reason(s) why not included on the Forward Plan: Not Applicable

Is this a Late Report?
Reason(s) why Late: Not Applicable

Is this decision eligible for 'call in?' Not Applicable

If not eligible, please provide reason(s): Not Applicable

Wards: All wards

Does this report contain exempt or confidential information? No

1 EXECUTIVE SUMMARY

- 1.1 The Greater Birmingham and Solihull Local Enterprise Partnership (GBSLEP) was set up in 2011 to encourage local economic growth based on natural economic boundaries in the region. As a part of this role, it was responsible for the management of a number of grant and loan funding programmes.
- 1.2 The GBSLEP like all other LEPS, was required to be established as a separate legal entity. Accordingly, it was incorporated as a Company Limited by Guarantee in 2011. Birmingham City Council is one of the founding (and alongside Solihull MBC one of only two remaining) Members of the Company. The company was dormant until 2018, when a change in Government policy required GBSLEP Ltd to be activated and assets and liabilities to be transferred into the company from Birmingham City Council as its Accountable Body.
- 1.3 In 2022, the UK Government mandated the integration of Local Enterprise Partnerships into local democratically elected institutions. As a consequence, in September 2022 the GBSLEP Board decided on the gradual and controlled tapering down of its operations towards full closure by March 2024.
- 1.4 On 27 June 2023 BCC Cabinet approved the Integration of a number of GBSLEP Legacy Programmes, including the Enterprise Zone to BCC on 1 July 2023. This report sets out the scrutiny of the integration of the GBSLEP functions into Birmingham City Council including the administration of the Ringfenced Legacy funds and the permissible uses of these funds.

2 COMMISSIONERS' REVIEW

- 2.1 This section will be completed by the Commissioners and is mandatory for all reports.

3 RECOMMENDATIONS

That the Overview and Scrutiny Committee:

- 3.1 Review and note current progress in regard to the liquidation of GBSLEP Ltd.
- 3.2 Note the transfer of the Legacy Programme and associated data to be managed through the arrangements set out in this report.

4 KEY INFORMATION

Context

- 4.1 In 2022, the UK Government mandated the integration of Local Enterprise Partnerships into local democratically elected institutions. GBSLEP, along with Black Country LEP and Coventry & Warwickshire LEP, was identified as being in 'Integration Pathway 1'; integrating into existing Combined Authorities or institutions with devolved powers. As a consequence, at its meeting in September 2022 the GBSLEP Board decided on the gradual and controlled tapering down of its operations leading to the appointment of a William Duncan (Business

Recovery) Limited to advise on the liquidation process with their formal appointment as liquidator following in March 2024 for the purposes of the voluntary winding up of the company. This process was captured in the GBSLEP Transition Plan, which was submitted to Government by the West Midlands Combined Authority (WMCA) in February 2023 as an appendix to the WMCA-wide LEP Integration Plan.

4.2 As part of the process, several GBSLEP Functions transferred from GBSLEP to other institutions. The transfer involved.

4.2.1 The transfer of the Enterprise Zone (EZ) funded SuperTech contract and Business Professional Financial Services Cluster project to Birmingham City University completed on 30 June 2023. This involved a deed of Transfer between GBSLEP and Birmingham City University (BCU) and an agreement between BCU, BCC and GBSLEP regarding the novation of the EZ grant. The transfer comprised data associated with the specific function, payment for the remaining GBSLEP match funding for the project, and for costs relating to the transferred staff, and the TUPE transfer of two GBSLEP staff.

4.2.2 The transfer of legacy programmes including EZ and Local Growth Fund to BCC completed on 30 June 2023. This involved a deed of Transfer between GBSLEP and BCC which also covered subsequent transfers of data and of the Growth Hub delivery function. This transfer comprised the TUPE transfer of two GBSLEP staff. Two consultants who previously worked for GBSLEP continued under contract with BCC.

4.2.3 The transfer of functions, data, people and funds from GBSLEP to BCC as its accountable body is set out in the Deed of Transfer executed between GBSLEP and BCC on 30th June 2023, and the Confirmation Deed of Transfer, signed on 30th November 2023.

4.2.4 The GBSLEP Programme Delivery Board (PDB) dissolved, and the newly formed Enterprise Zone Partnership Board (EZPB) took over governance. The membership of this board includes GBSLEP Board members including Councillor Cotton, private sector nominations; Mike Lyons as Chair of the Board, Pat Hanlon, and Louise Brooke-Smith, and a senior officer representing Solihull Metropolitan Borough Council (SMBC) and the other GBSLEP constituent local authorities. Terms of reference of the EZPB included in Appendix A.

4.2.5 The transfer of the Growth Hub delivery team to BCC completed on 30 November 2023. This involved a Confirmation Deed of Transfer between GBSLEP and BCC. The transfer comprised live and archived data from the GBSLEP CRM, as well as the TUPE transfer of 16 staff. The Growth Hub delivery team had already started delivering against the UKSPF output targets for both BCC and SMBC from June 2023 onwards and that work had been governed by a Memorandum of Understanding (MoU) between BCC and GBSLEP in the period up to the transfer on 30 November 2023.

- 4.2.6 The transfer of GBSLEP data to BCC commenced in July 2023 and completed mid-March 2024. This was covered in the deed of Transfer and subsequent Confirmation Deed of Transfer between GBSLEP and BCC.
- 4.2.7 Data comprised of the latest Management and Financial data, the data relating to the European Social Fund (ESF) project, Sharepoint, Zoho books and Verto and will enable BCC to respond to any Subject Access Requests or requests under the Freedom of Information Act as well as to continue operations of the Enterprise Zone, Legacy Programmes and Business Support functions.
- 4.3 GBSLEP appointed William Duncan (Business Recovery) Limited in a consultancy capacity in April 2023 to ensure that all GBSLEP's known liabilities, including any tax and pension liabilities, were settled before March 2024. On 7 March 2024, the GBSLEP Members resolved to enter into a 'Members Voluntary Liquidation' (MVL) and Steven Wright, Insolvency Practitioner of William Duncan (Business Recovery) Limited was formally appointed as liquidator. The company was solvent when it entered into MVL.
- 4.4 The MVL follows a set process, in which BCC Members and officers played a key role in three capacities:
- 4.4.1 as a Director on the GBSLEP Board, Councillor Cotton signed a declaration of solvency statement for the company in February 2024; and
- 4.4.2 as a Member of the GBSLEP (alongside SMBC), BCC passed the resolution to put the company into liquidation on 7 March 2024; and
- 4.4.3 as GBSLEP's Accountable Body for EZ and Legacy Programmes, and in accordance with guidance from the Government's Cities and Local Growth Unit (CLGU), BCC were required to receive and retain the GBSLEP corporate Records in line with the agreed retention schedule, and to receive GBSLEP's Residual Funds of circa £1.9m to use as set out in 7.1 below.
- 4.4.4 All costs associated with the MVL (including the Liquidator's fees) are to be funded by GBSLEP from its own resources. Once GBSLEP's outstanding debts and liabilities have been satisfied and the liquidation concluded, there is forecasted to be a residual fund of circa £1.9m. In accordance with the company's Articles of Association, funds not already held by BCC in its Accountable Body role, will be released by the liquidator William Duncan (Business Recovery) Limited on conclusion of the liquidation and transferred to BCC. Funds are to be held and ringfenced under accountable body arrangements as a new Legacy Fund arising from the Company. These funds are to be held separately to the Council's General Funds as ringfenced.
- 4.5 A number of additional permissible uses by BCC of the GBSLEP residual funds is set out in the Deed of Transfer and the Confirmation Deed of Transfer signed between BCC (Transferee) and GBSLEP (Transferor) on 30th June 2023 and 30th November 2023 respectively. This stipulates permissible use by BCC as:

- 4.5.1 any costs properly incurred during the period expiring at the end of 31 March 2025 as a result of redundancy (including associated pension strain costs) in respect of any Transferring Employee who remains in the same post or role to which they transferred on the Growth Hub Spoke Transfer as a result of the cessation, reduction and changes in the provision of Business Support. This is calculated as not exceeding £250,000; or
 - 4.5.2 any costs properly incurred as a result of management of the Legacy Projects transferring from the Transferor to the Transferee, including but not limited to any clawback of funding; or
 - 4.5.3 any costs properly incurred as a result of enquiries and requests for information from any Managing Authority to the Transferee in respect of funding provided to the Transferor through any of the EU Funded Projects; or
 - 4.5.4 any costs properly incurred by the Transferee as a result of the clawback of any funding provided to the Transferor through any of the EU Funded Projects and which funding has been paid back to such Managing Authority by the Transferee; or
 - 4.5.5 any costs properly incurred as a result of a successful claim under the Insurances being paid by the insurer net of any applicable excess amount due to be paid by the Transferor under the applicable policy, in which circumstances the relevant amount of the excess can be reimbursed either to the Transferee or other duly appointed custodian of the Insurances which receives such insurance claim amount.
- 4.6 BCC is GBSLEP's guarantor in the West Midlands Pension Fund. As such, when GBSLEP ceased to exist and exits the WMPF, all assets and liabilities will be assessed on a minimum risk basis for WMPF. It has been confirmed, if the value is a surplus or a liability, it will not be paid or received by GBSLEP. Rather, it will be subsumed by BCC as guarantor and will not be capable of being differentiated from the more general surplus or deficit of BCC's own pension fund balance. The latest actuarial valuation of GBSLEP's defined benefit pension liability issued by WMPF at the end of March 2023 shows a surplus of £600k.
- 4.7 The transfer of staff from GBSLEP to BCC (and previously to WMCA and BCU) was undertaken under the Transfer of Undertakings Protection of Employment Regulation 2006.
- 4.8 The transfer of data and records from GBSLEP to BCC is governed by regulations relating to data protection and privacy, including GDPR.

Proposal and Reasons for Recommendations

- 4.9 On 31st March 2022, the Department for Levelling Up, Housing and Communities (DLUHC) and the Department for Business, Energy and Industrial Strategy (BEIS) issued a joint letter and accompanying guidance to the Chairs of the LEPs in England and to the Mayors of Combined Authorities setting out their proposals

for the roles and functions of LEPs to be integrated into local democratic institutions, whether individual local authorities or combined authorities. The proposals also set out that the decision as to which function transferred to which successor body was a matter for local discretion.

- 4.10 Over the last decade, GBSLEP have developed a portfolio of assets and liabilities. The July Economic Growth Board confirmed that West Midlands Combined Authority (WMCA) will not seek to take on any legacy funds.
- 4.11 In 2022, the UK Government mandated the integration of Local Enterprise Partnerships into local democratically elected institutions. GBSLEP, along with Black Country LEP and Coventry & Warwickshire LEP, was identified as being in 'Integration Pathway 1'; integrating into existing Combined Authorities or institutions with devolved powers. As a consequence, the GBSLEP Board at its meeting in September 2022 decided on the gradual and controlled tapering down of its operations towards full closure in March 2024.

Other Options Considered

- 4.12 Not applicable

5 RISK MANAGEMENT

- 5.1 Risk is managed through the Enterprise Zone Assurance Framework (Appendix A). This framework sets out the detailed governance arrangements for the EZ and GBSLEP legacy programmes. The Framework sets out the detailed governance arrangements for the EZ including six appendices detailing; EZ Partnership Board Terms of Reference, EZ Programme Board Terms of Reference, EZ Oversight Board Terms of Reference, EZ Project Assessment Panel Terms of Reference, EZ Financial Principles and EZ Change Policy.
- 5.2 The framework will continue to be reviewed and updated as required. Cabinet approved as part of the Governance EZ Framework report, on the 14 of May 2024, to delegate the review and approval of further updates to the S151 Officer or delegate.
- 5.3 There are financial risks associated with the Accountable Body role, the main one being failure of the EZ to deliver sufficient business rates uplift to cover the level of borrowing and up-front revenue expenditure incurred by the City Council
- 5.4 Financial risk has and will continue to be managed primarily through detailed financial modelling, with regular reporting to BCC and the Enterprise Zone Partnership Board.
- 5.5 All projects are required to produce robust risk strategies as part of their full business case. These will be maintained throughout the life cycle of the project in line with BCC performance management requirements.

6 CONSULTATION

6.1 In 2022, the UK Government mandated the integration of Local Enterprise Partnerships into local democratically elected institutions. GBSLEP, along with Black Country LEP and Coventry & Warwickshire LEP, was identified as being in 'Integration Pathway 1'; integrating into existing Combined Authorities or institutions with evolved powers. As a consequence, the GBSLEP Board at its September 2022 meeting considered all options and decided on the gradual and controlled tapering down of its operations towards full closure in March 2024. This process was captured in the GBSLEP Transition Plan, which was submitted to Government by the West Midlands Combined Authority (WMCA) in February 2023.

7 IMPACT AND IMPLICATIONS

Finance

7.1 The transfer of the Enterprise Zone (EZ) and GBSLEP Legacy funds to the Council completed on 27th June 2023. Upon transfer to BCC, the funds continue to be held separately to the Council's General Funds as ringfenced funds and are managed by BCC as accountable body. Both the Enterprise Zone and GBSLEP Legacy funds are monitored and reported regularly to the Enterprise Zone Partnership Board who oversee and make decisions on the use of these funds. The balances held as EZ funds and GBSLEP Legacy Funds as of 31st March 2024 are shown in table 1 below and overleaf.

TABLE 1 - Fund	Balance as at 31/03/24
	£
GBSLEP Legacy Funds:	
NEW Growing Places - CAP	(417,063)
NEW Growing Places - Rev	(112,411)
LGF Recycled	(353,152)
LEP Pension Bond (Ringfenced)	(177,000)
Total Legacy	(1,059,626)
Enterprise Zone Funds (Surplus)	(18,660,831)

7.2 In addition to these funds, a further balance of up to £1.9m is anticipated to be transferred to BCC upon the conclusion of the liquidation of the GBSLEP that is expected to be completed at a later date during the 2024/25 financial year. This will be added to the available GBSLEP Legacy Fund to be used as set out above.

Legal

7.3 Integration of identified GBSLEP functions into the Council in accordance with the Central Government direction, was made pursuant to the general power of competence contained in s1 Localism Act 2011.

Equalities

- 7.4 The liquidation of GBSLEP does not carry with it any specific equalities implications. The GBSLEP is not a Public Authority under the terms of the Equality Act but has sought to follow the principles as relevant to its activities. The GBSLEP has a strong track record of supporting businesses from all backgrounds and as the Growth Hub function transfers to BCC, performance in this area will default to BCC as it delivers business support as part of the UKSPF-funded regional Business Growth West Midlands service.

Procurement

- 7.5 There are no procurement implications related to the recommendation in this report. Any projects with procurement implications arising from the legacy programme projects will be covered in separate reports and follow the Council's procurement and contract governance rules and the Public Contracts Regulations 2015 or the Procurement Act 2023 where applicable.

People Services

- 7.6 There are no People Services implications related to the recommendations in this report.

Climate Change, Nature and Net Zero

- 7.7 There are no Climate Change, Nature and Net Zero implications related to the recommendations in this report.

Corporate Parenting

- 7.8 There are no implications or opportunities implications in relation to The Corporate Parenting responsibility from the recommendation in this report.

Other

- 7.9 There are no implications related to the recommendation in this report.

8 APPENDICES

- 8.1 Appendix A – EZ Assurance Framework and appended papers.

9 BACKGROUND PAPERS

- 9.1 Integration of Greater Birmingham Local Enterprise Partnership to BCC 27 June 2023
- 9.2 EZ Management Levy Cabinet Report 19 March 2024