

Birmingham City Council

Sustainability & Transport Overview and Scrutiny Committee

08 February 2024



Subject: Highways Maintenance and Management Services PFI

Report of: Stephen Walton, Head of PFI Procurement, Highways and Infrastructure

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1 Purpose

- 1.1 To provide a further update to the Committee, following the previous briefing dated 21 December 2023 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 (25 January 2024).

2 Recommendations

- 2.1 The Committee notes the report.

3 Confidentiality

- 3.1 As the Council has now taken steps to commence Judicial Review proceedings (as explained below at paragraph 4), it is important to be aware that (i) any "new" material which is created which relates to the Judicial Review case would be disclosable and that the legal team should be consulted before doing so; and (ii) that no personal views/opinions should be expressed regarding the proceedings, as this may compromise the Council's position in court. This includes publishing anything in the public domain in written format and saying anything verbally in the public domain. Please note that any internal documents created may also be disclosable unless they are covered by legal privilege.
- 3.2 The following may be used if asked by the media or an interested party for an update on the current position:

“Having taken legal advice (which for the avoidance of doubt remains privileged), the Council can confirm that it has commenced Judicial Review proceedings in relation to the Government’s decision to reject the Outline Business Case. This matter is now subject to ongoing legal proceedings and therefore, it would be inappropriate for the Council, its staff and/or members to provide any further comments in respect of this matter at this stage and pending the outcome of such proceedings. Our foremost priority remains continuity of services and ensuring the safety of citizens and visitors across the network.”

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, 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.

5 Next Steps

- 5.1 The court has confirmed that a hearing for the Judicial Review proceedings will be scheduled for no later than the end of March 2024.
- 5.2 Our priority remains continued delivery of statutory highway functions and services across the city, ensuring the safety of our citizens and visitors across the network.
- 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 is currently in place until the end of March 2024 and further interim arrangements will need to be considered prior to then in order to provide continuation of services.
- 5.5 Depending on the result of the Judicial Review a longer-term review of service provision will be considered.
- 5.6 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")