

## BIRMINGHAM CITY COUNCIL

# RESOURCES O&S COMMITTEE

1600 hours on 1<sup>st</sup> June, Council Chamber – Actions

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**Present:**

Councillor Mohammed Aikhlaq (Chair)

Councillors Majid Mahmood, David Barrie, Shafique Shah, Barbara Dring, Paul Tilsley and Meirion Jenkins.

**Also, Present:**

Councillor Waseem Zaffar

Councillor Robert Alden

Councillor Ewan Mackey

Satinder Sahota, AD, Legal

Stephen Arnold, Head of CAZ

Richard Tibbatts, Head of Category, Procurement

William Brown, Turner Townsend

Ceri Saunders, Acting Group O&S Manager

Baseema Begum, Scrutiny Officer

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**1. NOTICE OF RECORDING/WEBCAST**

The Chair advised those present that the meeting would be webcast for live and subsequent broadcast via the Council's Internet site and that Members of the press/public may record and take photographs except where there are confidential or exempt items.

**2. APOLOGIES**

Cllr Lisa Trickett.

Cllr Afzal incorrectly listed as Chair on the Scrutiny webpage. This was noted and will be corrected.

### **3. DECLARATIONS OF INTERESTS**

None.

### **4. REQUEST FOR CALL IN: PLANNED PROCUREMENT ACTIVITIES (JUNE 2021 - AUGUST 2021) AND QUARTERLY CONTRACT AWARD SCHEDULE (JANUARY - MARCH 21) – CALL IN**

The Chair welcomed all attendees and invited Councillors Alden and Mackey to state the reasons for the call-in request.

As per the 'Request to Call-In Proforma' Cllr Alden outlined that reasons 3, 6, 7, 8 and 9 of the set criteria (included in the agenda pack) had been used as the basis of the call-in.

Cllr Alden clarified that the call-in request was specifically about the concerns relating to the procurement process and not whether there should be a Clean Air Zone (CAZ) or not. These concerns were detailed as follows: -

- Previous call-ins on the CAZ have highlighted the concerns that the committee has had in relation to the correct process not being followed.
- The report to the Cabinet meeting on 18<sup>th</sup> May recommends that Cabinet approve the procurement process however there are clear governance issues.
- Processing of card payments and the Direct Debit (DD) process are noted in this report to Cabinet as needing to be in place by 1<sup>st</sup> June. However, action needed to be taken before this date to ensure that this was included in an earlier planned procurement report (PPAR) rather than one that was for matters to be implemented between June and August. This is a key issue and the purpose of PPAR and as such is noted in the Council's Constitution.
- There had been 3 PPARs to Cabinet (February, March and April 2021) where the details on the two payment processes could have been included for planned procurement activity from March to July 2021. There was concern that these opportunities gave enough time to provide details and go through the appropriate channels as set out in the Constitution, but this was not done. The Council also has a set procedure for urgent reports that could have also been used (as a late report and updated at the meeting).
- Notified that information relating to the DD process was not available until mid-March however the Council were aware of it at that point and as such could have included it into the April PPAR. In addition, the GoCardless contract was signed in October 2020 and this was not a new contract and so it allowed the Council enough time to include into an upcoming PPAR. Also, Stripe is not a new provider on gov.uk. and has been on the government framework since 2016.
- There are contradictory comments in the procurement report in relation to the providers Stripe and GoCardless where it is outlined that providers for council services need to be signatories to the Birmingham Charter for Social Responsibility (BCSR). The report also states that the Council had no choice in the use of providers as these were selected by the Department for Transport (DfT) but that providers must be signatories to the BCSR (and selected on the

basis on being signed up to the BCSR) to be able to be used by the Council. It is therefore worth noting that the Council cannot force these providers to sign up to the BCSR, so this is an inaccuracy noted in the report.

- The DD payment processing contract with GoCardless is for a 2-year period (starting on 1<sup>st</sup> June 2021 in line with DfT contract terms). There is concern that the contract that this provider has with the DfT finishes on 1<sup>st</sup> September 2022 whereas the Council's contract expires later (June 2023) and no reference to this has been made in the report in terms of the impact it might have. For example, issues in relation to a service break or a change in provider when the government re-procures the contract and what this may mean for the Council. This is fundamental information and impacts the length of contract being asked for.
- Bath and North Somerset Council also have a CAZ in place since 15<sup>th</sup> March using the same framework and providers but have not experienced the issues that Birmingham has.
- The Council's Constitution states in Section D3 (Procurement Governance Arrangements) under paragraph 3.2.3 that any planned procurement has to be brought back to the Cabinet for executive decision. In section 3.10 in reference to compliance it is made clear that awarding of a contract must be made before a procurement process takes place. It is therefore a requirement as set out in the Constitution.
- Section 2 of the briefing note to the Resources O&S Committee states the protocol of the PPAR and its purpose (Cabinet to be sighted on upcoming procurement activity and to inform Cabinet and Resources O&S). Concern that it would not have been possible to have done this at the time if more information was required by Cabinet in the form of a full report. Therefore, a report should have been done in advance to allow for any extra information requested to be provided and that proper financial due diligence was carried out.
- In addition, what was the procurement basis for taking the decision and was there sufficient delegation? In the 'Birmingham Clean Air Zone (CAZ) Update to Cabinet on Digital and Physical Infrastructure Development, Air Quality Monitoring and Income and Expenditure Forecast' report to Cabinet on 19<sup>th</sup> January 2021 section 1.1 referred to an online portal and working with the Joint Air Quality Unit (JAQU). Paragraph 7.2.6 highlights that a procurement exercise was required to introduce a payment/charging mechanism and 7.4.1 details procurement implications as "none". The last update to Cabinet indicated that no procurement exercise was needed for introducing a charging mechanism. Therefore, this report only notes what should take place. Existing delegated approvals in the January report made no reference to any procurement process being needed for a payment system therefore the Council doesn't have the delegated authority to be able to make a contract signing for the payment system and this wasn't given in the report in January. Cabinet were told in this report that there was no procurement necessary to do the payment system. However, in an additional report to Cabinet on 18<sup>th</sup> May a decision had been taken a few days before the CAZ was due to start and in this the Cabinet were told that a procurement process is needed and has

implications. Furthermore, information shared in the briefing note to Resources O&S was not shared with Cabinet. This should be referred to Cabinet, so it is aware of all the legal and financial risks.

Cllr Mackey added his reasons for requesting the call-in: -

- The Council needs to stick to the rules and law and follow good governance.
- Single contractor negotiations are bad value for the Council and more so when it only engages with one contractor/provider for a high value contract. This doesn't represent good value.
- The Council was aware that an online payment system would be required and therefore procurement implications. The report to Cabinet in January 2021 made it clear that the procurement process was not needed. This was agreed by Cabinet and so there was no delegated authority given to officers to enter contract negotiations. Therefore, if an officer goes against this then it is operating ultra vires. This report and decision needs to go back to Cabinet to be changed to allow for subsequent decisions and authority to be given. This needs to be checked.
- Residents that have been checking their vehicles online need to be filled in on what is happening as there seems to be errors occurring without the user knowing they could incur costs. For example those that are putting details in are finding that they won't be charged (for a non-compliant vehicle) because the payment system isn't charging currently even though a particular vehicle would be non-compliant so the public does need the correct information to be made clear. Those that checked this weekend were notified that no charge would be made however because of the discrepancy people need to be notified to check again to avoid future charges.

Members then made the following comments: -

- Single contract providers are often not best value. Information relating to other providers has been shared but acknowledge that government guidance to all local authorities was that only a specific provider could be used.
- The CAZ is an issue of high public interest and in that respect, officers have delayed presenting information to Cabinet.

The Chair then called on the Cabinet Member, Cllr Zaffar, and officers to respond to the points made as follows: -

- Cllr Zaffar welcomed the challenge from scrutiny and previous call-ins and explained that previous call-ins have no relevance to the decision today and that separate procurement processes were in place.
- It was clarified that the Cabinet accepted an amended report due to a clerical error (the original report detailed decisions made in May and yet the report referred to the June-July report). This was done on the advice of the Chief Finance Officer and it was agreed by Cabinet.
- Any non-compliant vehicle checking the on-line car-checker today will be given the correct information relating to their vehicle only and nothing relating to charges. The Council is working with communities and giving them more time to adjust. However, on the payments portal it is clear that no charging is taking place and payments are not being accepted. Extensive consultation has taken

place on how to launch the CAZ and how communities are able to adjust to the policy. This is in line with other Council decisions on charging such as bus gate enforcement where no charging has taken place on the day that the policy starts.

Stephen Arnold, Head of CAZ added the following in relation to the points raised: -

- The CAZ agreement and delegated authority requested in the 19<sup>th</sup> January 2021 report to Cabinet refers to the provision of an online vehicle checker, a payment portal and a national contact centre that is provided by the government as part of the central services. However, within the CAZ agreement it makes no specification about additional sub-contractors. At that point a request was put forward to seek delegated authority to enter into that agreement with the Secretary of State. It is important to note this as it crucial to the timeline. There was no procurement issue at this point as the Council was not aware of the contractual agreements that would need to be entered into with GoCardless and Stripe, the impact on the timeline and that no delegated authority was required or requested.
- The Council engaged with and worked to the set timeline with both contractors. In relation to GoCardless the Council sought details of the arrangement that was in place with government in relation to the contract signed with DfT in late 2020 very early on. However, at this point the Council was unclear about what contractual arrangement would exist between the Council and GoCardless.
- With reference to the set CAZ guidance from December 2020 that was being worked to at the time it was clear that for DD payments GovPay utilise GoCardless and that local authorities would be required to contract with them through GovPay. At that point the Council was engaging with GoCardless and seeking confirmation on what the contractual arrangement would be. On 8<sup>th</sup> March 2021 a Local Authority addendum was received notifying the Council that it would need to review the full contractual details before signing up (as signed up to by government) and this contract was received on 11<sup>th</sup> March. This led to the Council entering into a period of protracted discussion as the CAZ guidance sets out financial terms that local authorities are asked to sign up to. This was queried in light of the CAZ agreement because there are fees that are levied against the local authority through the statutory instrument which was set down in December 2020.
- Following a number of queries and clarification on the terms due to inconsistency in previous discussions it was confirmed that no charges would be levied against the Council. The final version of the contract was received from DfT in mid-April and it was not possible to have worked with the timescales set out for regular PPAR highlighted earlier although frustrating that this meant a delay in reporting to Cabinet.
- In response to legal risk and issues raised, Satinder Sahota, Assistant Director, Legal & Governance added that based on the information heard at the meeting today and information provided it was clear that proceeding with the procurement with Stripe & GoCardless did not represent a legal risk to the Council. Furthermore, in relation to the procurement process as set out in the Constitution and PPAR it was explained that notifying the Cabinet was

dependent on the circumstances. For instance, if a contract is available to be able to present (or a summary of) then this will be provided to Cabinet. In this situation the relevant service officer has detailed the sequencing of events and at what point the Council was aware of changes.

- In relation to the reference made to Section 3.2, Part D of the Constitution reference is made to PPAR. The need to procure with DD and card processing providers is also mentioned in the appendix but does not specify providers.

Councillors Alden and Mackey summarised the key points for the committee to consider prior to taking a vote.

Members held a discussion where the following points were raised: -

- Concern about the negative media coverage and the public being informed of the changes to charging on the morning of the 1<sup>st</sup> June.
- The briefing note to committee details a defence and is not balanced.
- Cleaning up the air in the city is a priority however the Council has been aware of this scheme for the last 2 years however the procurement process has been left to the last minute and having only been given one provider to work with. Further reports are needed to Cabinet that details what Bath and North Somerset have been doing and to ensure that Birmingham is paying a competitive price on its contract.
- Lack of resources from government and there has been a lot of delay in getting the CAZ going. Calling-in this decision won't be beneficial to the city or committee however lessons do need to be learnt in respect of single contractor negotiations and the implementation of actions inserted into the contract.
- The decision should have been made exempt to being "called-in" as there was a mandatory requirement from government to use certain providers only.

A vote of the Committee then took place as follows with 4:3 in favour of not calling-in the decision.

The Chair thanked everyone for their attendance and taking part in the discussion.

**RESOLVED:** -

1. The decision was not called-in.
2. Committee to undertake further work based on the issues raised at the meeting.

**5. REQUEST(S) FOR CALL IN/COUNCILLOR CALL FOR ACTION/PETITIONS (IF ANY)**

None.

**6. OTHER URGENT BUSINESS**

Meeting times to be discussed at the next Committee meeting.

**7. AUTHORITY TO CHAIRMAN AND OFFICERS**

Agreed.

**RESOLVED: -**

That in an urgent situation between meetings the Chair, jointly with the relevant Chief Officer, has authority to act on behalf of the Committee.

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The meeting ended at 17:21 hours.