

# RESOURCES AND SERVICES OVERVIEW AND SCRUTINY COMMITTEE

14 APRIL 2025

## REPORT OF CHIEF EXECUTIVE

### A.1 OUTCOME FROM THE SPENDELLS HOUSE CAPITAL SCHEME REVIEW

#### PURPOSE OF THE REPORT

The report provides the Committee with the review document arising from the review of the Spendells House Capital Scheme. That review document is set out at Appendix A to this report. This report also reminds the Committee that the Council's Audit Committee also has a role in reviewing the subject of Appendix A and provides details of guidance in respect of the roles of Audit and Overview & Scrutiny in relation to such matters.

#### SCOPE - THE AIMS AND OBJECTIVES OF THE REPORT

The matter of the Spendells refurbishment project to provide temporary accommodation for homeless families has been referenced in several reports provided to the Committee over a number of years. The issue of unauthorised expenditure in respect of the project was reported to the July 2024 meeting of the Committee. On 17 December 2024 the Committee was advised that arrangements would be made with the Chairmen of this Committee and of the Audit Committee to receive the findings in relation to the investigation into the Council's development of Spendells House, Naze Park Road, Walton-on-the-Naze (and specifically the unauthorised expenditure).

This investigation report into the project is set out at Appendix A to this report. It has been the subject of a joint briefing for Members of this Committee and Members of the Audit Committee on 26 March 2025. The Audit Committee then considered the detail at Appendix A at its meeting on 27 March 2025. At that meeting on 27 March, Audit Committee approved the following having considered that detail:

*"[...] (b) [...] that the findings be noted and that Officers be requested to bring these together with the outcomes from other various reviews of major projects, in addition to any associated recommendations from External/Internal Audit for consideration as part of the annual review of the Council's governance arrangements at the earliest opportunity in 2025/26;*

*[...]*

*(d) the Chief Executive Officer be invited to attend a future meeting of the Committee to give a half yearly update on the matters raised in the review of the Spendells Capital Scheme Review;"*

#### INVITEES

None. The report author, the Council's Chief Executive (Mr Ian Davidson) will be in attendance to present the report.

#### BACKGROUND

The Committee is reminded of the following extracts from the Council's Constitution in respect of its role in respect of the matter to which this report relates:

##### ARTICLE 6 – OVERVIEW AND SCRUTINY FUNCTION

##### 6.01 General Role and Functions:

The Council will appoint two Overview and Scrutiny Committees, whose terms of reference

are as set out below. Within its functions, each Overview and Scrutiny Committee will:

1. Review or scrutinise executive decisions made by the Cabinet (including those delegated to Portfolio Holders and Officers) or are due to be made by the Cabinet or a Portfolio Holder **including performance in relation to individual decisions over a period of time**;
2. Act as a consultee on policy development and review of policies;
3. Submit to Full Council for approval an annual overview and scrutiny work programme;
4. **Make reports or recommendations to the Cabinet or the Council as appropriate, with respect to the discharge of any Council function or on any matter affecting the authority's area or its inhabitants.**
5. Prepare and present an annual performance report to Full Council covering the outcomes of the overview and scrutiny functions by each committee;
6. Deal with any Call-in of Cabinet decisions (including those delegated to Portfolio Holders and Officers) in accordance with the Overview & Scrutiny Procedure Rules;
7. Consider requests for scrutiny reviews under the Councillor Call for Action process and petitions as referred under the Petitions Scheme and Council Procedure Rules.

To perform the role of Overview and Scrutiny and its functions in relation to the effective use of the Council's resources including approval of discrete researched and evidenced reviews on the effectiveness of:

Financial Forecast Budget setting and monitoring (including General Fund & Housing Revenue Account but excluding those budgetary matters delegated to the Community Leadership Overview and Scrutiny Committee)

- Colchester/Tendring Borders Garden Community
- Housing Strategy and **Homeless Service**
- **Service Delivery and Performance** (where not delegated to the Community Leadership Overview and Scrutiny Committee)
- **Procurement and Contract Management**
- Transformation and Digital Strategies
- Customer Service and Standards

The highlighting above is to draw out the relevant areas of the Committee's overview and scrutiny role as it concerns the subject of this report.

In respect of the review of the subject of this report, the Committee's attention is drawn to CfGS guidance on the respective, and in part overlapping, roles of Audit and Overview and Scrutiny. That guidance states that:

"Given these overall functions and responsibilities there are a few areas of policy and practice where the work of the audit committees and scrutiny committees could overlap. For example:

- Reviewing regular finance and performance reports;
- Reviewing council commercial activity, including oversight of procurement;
- General review of value for money arrangements."

The same guidance also suggests that areas for collaboration (or perhaps agreement as to who is taking the lead) are:

- Action on mindset and culture.

- Securing good governance.
- Risk.
- Value for money.
- Wider policy issues, and the impact of council strategy on financial management.

Looking at these matters it is worth repeating here that the Audit Committee of this Council, on the subject of this report, has already approved:

*“[...] (b) [...] that the findings be noted and that Officers be requested to bring these together with the outcomes from other various reviews of major projects, in addition to any associated recommendations from External/Internal Audit for consideration as part of the annual review of the Council’s governance arrangements at the earliest opportunity in 2025/26;*

*[...]*

*(d) the Chief Executive Officer be invited to attend a future meeting of the Committee to give a half yearly update on the matters raised in the review of the Spendells Capital Scheme Review;”*

It may be helpful for the Committee to consider its focus, using the CfGS guidance referred to above, in respect of this item and the separate item for consideration at this meeting around the Cabinet projects update.

#### **RELEVANT CORPORATE PLAN THEME/ANNUAL CABINET PRIORITY**

The Corporate Plan themes for the Council for the period 2024-28 are:

- Pride in our area and services to residents
- Raising aspirations and creating opportunities
- Championing our local environment
- Working with partners to improve quality of life
- Promoting our heritage offer, attracting visitors and encouraging them to stay longer
- Financial sustainability and openness

The overall project of Spendells can be said to contribute to several of the above themes. In regard to this specific report, the expanded text of the financial sustainability and openness theme above, is relevant:

*“To continue to deliver effective services and get things done we must look after the public purse; that means carefully planning what we do, managing capacity, and prioritising what we focus our time, money and assets on. Tough decisions will not be shied away from, but will be taken transparently, be well-informed, and based upon engagement with our residents. We will give clarity on where the Council spends the money it is provided with.”*

#### **DESIRED OUTCOME OF THE CONSIDERATION OF THIS ITEM**

Having considered the report and debated it in its formal meeting, the Committee is invited to note the decision of the Audit Committee in respect of the detail at Appendix A and whether there are any further matters the Committee wishes to refer to the Cabinet/Portfolio Holder.

#### **DETAILED INFORMATION**

The detail in respect of the review is set out in Appendix A to this report.

## RECOMMENDATION

That the Committee:

- (a) notes that, in respect of the detail of the review set out in Appendix A to this report, the Audit Committee approved:  
*“that the findings are noted and that Officers be requested to bring these together with the outcomes from other various reviews of major projects, in addition to any associated recommendations from External / Internal Audit for consideration as part of the annual review of the Council’s governance arrangements at the earliest opportunity in 2025/26.”* and
- (b) determines whether it has any comments or recommendations it wishes to put forward the relevant Portfolio Holder or Cabinet.

## PREVIOUS RELEVANT DECISIONS

Minute 50 of the Committee’s meeting on 22 July 2024 - That, once the Chief Executive’s formal review (on how the issue of unauthorised expenditure arose and developed in respect of the Spendells project) has been completed, the Cabinet reports on its lessons learnt.

Minute 57 of the Committee’s meeting on 23 September 2024 – Noted the position.

Minute 64 of the Committee’s meeting on 17 December 2024 – it was noted that arrangements would be made with the Chairmen of this Committee and of the Audit Committee to receive the findings in relation to the investigation into the Council’s development of Spendells House, Naze Park Road, Walton-on-the-Naze.

## BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

The initial report of unauthorised expenditure in relation to the Spendells project was submitted to Cabinet on 17 May 2024. That report, and the Section 151 Officer’s addendum to that report are set out here:

<https://tdcdemocracy.tendringdc.gov.uk/ieListDocuments.aspx?CId=134&MId=2261&Ver=4>

The includes the following statement at the time from the Monitoring Officer:

*“The Monitoring Officer is a co-author of the Report, only in so far as complying with the Section 5A of the Local Government and Housing Act 1989 obligations and has not been directly provided with information regarding the specification, contract and variations and requests Cabinet to rely on the assurances provided by the project team officers. The previous decisions have however, been reviewed.*

*In the previous decision section of this Cabinet report, the last decision made (recorded and published) in relation to the Spendells project was on 1st August 2023, to appoint the main contractor to complete the Refurbishment and Adaptation works, accept the revised tender of ARC Group London to carry out the works and to instruct the Head of Legal Services to enter into the contract with ARC Group London on behalf of the Council. The Tender Price was redacted but referred to in a previous decision of the Housing & Planning Portfolio Holder and the Leader of the Council and Corporate Finance & Governance Portfolio Holder on 13th June 2023, which referred to a contract price of £1.25million. A further decision by the Housing & Planning Portfolio Holder and the Leader of the Council and Corporate Finance & Governance Portfolio Holder on 21/07/2023 included the additional inflationary costs that had become apparent.*

*Whilst it is accepted that with JCT contracts, variations are permitted through contract management, the governance needs to be in place beforehand to ensure unauthorised spend is not committed. No further decisions have been made to authorise the variations to the contract to increase its cost, ensure the business case was still advantageous, value for money considerations and ensure the budget provision was in place. Any instructions issued seeking variations to the works are consequently unauthorised and this report is informing Cabinet that rectification is required.*

*Instructions were given by the project team to the contractor without following the Council's Financial Procedure Rules. [...]"*

## **APPENDICES**

A – The report of the Chief Executive in respect of the project.

## **REPORT CONTACT OFFICER(S)**

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## OUTCOME FROM THE SPENDELLS HOUSE CAPITAL SCHEME REVIEW

### Introduction, Background and Objectives

On 24th May 2024, a joint report of the Portfolio Holder for Planning and Housing and the Monitoring Officer, was presented to Cabinet, which provided a further update on the provision of temporary accommodation via the Spendells House project. The report also reported a review of the Budget position and Reference under Section 5 of the Local Government and Housing Act 1989. The purpose of the report was as follows:

- To update Cabinet on progress with Spendells House being retained and reconfigured for the provision of temporary housing accommodation
- To seek continued support for the project in the light of the options available and the ongoing need for the accommodation
- To seek additional funding for additional work to address matters that were not within the specification and were brought to light in the course of the project
- To inform Members of a breach of the Council's Financial Procedure Rules and legal decision-making requirements with regard to variation of a contract without sufficient approvals in place and the actions taken in response

The Monitoring Officer was the co-author of the report, only in so far as complying with the Section 5A of the Local Government and Housing Act 1989 obligations. An addendum report was also presented to the same meeting of Cabinet providing further update on Spendells House and review of budget and reference with the comments of the Assistant Director Finance and IT and Section 151 Officer.

Subsequently the Chief Executive Officer:

- (a) Instructed that a formal review be undertaken to provide further clarity on how the issue arose and developed (including the governance arrangements associated with issuing verbal orders), which in turn can inform any further actions along with informing decision making and project delivery in the future;
- (b) issued a directive to all Senior Managers relating to financial and budget management, which explains the consequences and expectations of them in their roles and will be supported by further collective meetings with Senior Officers over the coming weeks / months; and
- (c) commenced arrangements for the implementation of a Senior Officer Project 'Board' that in turn will report directly to the Council's Senior Management Team on a regular basis.

In respect of Item b) above, the directive referred has been issued and will form part of on-going collective meetings with senior officers over the course of the year as necessary, with an initial session held at a recent Senior Management Forum event.

In respect of Item c) above, arrangements remain ongoing and a further update will be provided to the Committee later in the year which will also be informed by the outcome of the review highlighted in a) above.

In respect of item a) above, this report sets out the initial outcome and recommendations emerging from that review with further details set out below.

In instigating the review, the Chief Executive directed the following:

1. To review the issues in relating to Spendells House, supported by the Section 151 Officer and Monitoring Officer with the Internal Audit Manager and Executive Projects Manager – Governance, duly appointed to conduct the review.
2. The scope of the review to cover the following areas:
  - a) Financial position
  - b) Identify spend which has not been approved
  - c) Was the spend unforeseeable or omitted from the specification of the project
  - d) Who agreed the unauthorised spend
  - e) As a result of the review, recommendation as to whether there should be a disciplinary investigation on any officers

### **Background**

Spendells House is a 1960s constructed sheltered housing scheme with shared washing facilities and limited living space by modern standards.

Key dates for decisions on Spendells House are set out below;

- **10 November 2017** Cabinet received the report of the then Housing Portfolio Holder and approved formal consultation on the future of two Sheltered Housing Schemes including Spendells House.
- **23 March 2018** Cabinet received the report of the then Housing Portfolio Holder and decided on the Closure of two Sheltered Housing Schemes.
- **26 June 2020** Cabinet decided to bring Spendells House back into use as temporary accommodation - A.5 – minute no. 25.

Officers arranged for the site to be stripped internally of all asbestos and a specification and a formal procurement process were completed.

The procurement process was completed, in accordance with the Council's Rules of Procedure and the lowest tender returned was in the sum of £1.250m.

- **23 September 2022**, a further decision by the then Cabinet was proposed in order to consider a report on the review of budget position and award of contract and agreed to Spendells House.
- **14 February 2023**, the Full Council decided to allocate additional funding for the project as part of the HRA budget setting process.
- **March 2023**, a proposal for further decision on the future use of Spendells House, Walton-on-the-Naze - Approval of financial business case was published.
- **June 2023**, the Housing & Planning Portfolio Holder, Leader of the Council and Corporate Finance & Governance Portfolio Holder considered an update on Spendells House and Review of Budget. The Leader and Portfolio Holder noted the increased costs, to be financed through capital receipts, noted the updated business case and confirmed support for the project. ref: 11505.
- **21 July 2023**, the Housing & Planning Portfolio Holder, Leader of the Council and Corporate Finance & Governance Portfolio Holder considered a further update on Spendells House and further review of budget and agreed to continue with the project proposing to finance additional costs by reallocating money from within the HRA capital programme ref: 11622.
- **1 August 2023**, the Corporate Director, in consultation with the Portfolio Holder with responsibility for Housing decided to appoint ARC to complete the work and to authorise the Head of Legal Services to enter into the construction contract.

- **16 October 2023**, Work on site started.

### **Review and Outcomes**

The review undertaken involved speaking with relevant officers along with obtaining information and documentation covering and supporting the following elements:

- Current financial position
- Contract and specification
- Management oversight – governance and financial approval processes
- Unauthorised spend
- Conclusion and recommendations

### **Current Financial Position**

At its meeting on 24 May 2024, Cabinet approved an additional budget of £860,000 and the Chief Executive has approved via a separate decision, a further budget of £60,000 to meet the cost of fire doors.

The above brings the total capital project budget to £2.387m with a detailed history below:

<b>Report</b>	<b>Adjustment</b>	<b>Total Project Budget (Capital)</b>
Full Council February 2022 – HRA Capital Programme 2022/23	Reflected Initial Estimate	£600,000
Budget 2023/24 as agreed by Full Council February 2023	Addition of £800,000	£1,400,000
24 May 2024 Cabinet Report Item A.6	Addition of £860,000  (plus addition of furniture costs and other associated budget adjustments)	£2,327,000
Decision of the Chief Executive 10 June 2024	Addition of £60,000 to support the cost of replacement fire doors	£2,387,000

As at the 18 March 2025, the total capital expenditure incurred is £2,342,629. It remains the Service's expectation that the project will be delivered within the total existing capital budgets.

### **Contract**

The contract between Tendring District Council and ARC Group London was signed and sealed on 30 Jan 24 utilising an Intermediate Building Contract 2016 (JCT).

The terms of the contract included a number of relevant elements such as responding to delays and extensions etc. It is worth highlighting the contractor provided their advice to extend the construction period along with a longer lead in time.

As with most construction projects, the contract allows for variations and it states that the Council may sanction in writing any variation made by the Contractor otherwise than pursuant to an instruction.

In terms of the definition of a variation, the contract states:

1. The alteration or modification of the design, quality or quantity of the Works including:



- 1 - the addition, omission or substitution of any work
  - 2 – the alteration of the kind or standard of any of the materials or goods to be used in the Works;
  - 3 – the removal from the site of any work executed or Site Materials other than work, materials or goods which are not in accordance with this Contract;
2. The imposition by the Employer of any obligations or restrictions in regard to the following matters or any addition to or alteration or omission of any such obligations or restrictions that are so imposed or are imposed by the Contract Documents in regard to:
- 1 – access to the site or use of any specific parts of the site;
  - 2 – limitations of working space;
  - 3 – limitations of working hours; or
  - 4 – the execution or completion of the work in any specific order.

*In terms of the valuation of a variation, the contract states that amounts are as agreed by the Employer and the Contractor or, where not agreed, the amount valued by the Quantity Surveyor (a 'Valuation').*

***Some key points identified against the key elements of the process are as follow:***

#### **Contract Specification**

- Consideration could have been given to obtaining external support in writing the specification.
- The specification could have minimised contract variations and covered reasonably foreseeable issues – there were 40 variation orders issued.

#### **Management Oversight and Governance**

- It took just over a year to produce a business case and then appointing a contractor to begin works.
- Unclear process for dealing with variations to the specification and contract
- There was a period of long-term sickness absence during the project and related to the oversight role.
- The project may have benefitted from additional capacity.
- The financial position of the project was not discussed during project meetings.
- The initial project completion date was the end of March 2024, then extended to the end of August 2024 and then November 2024 for completion and handover.
- £600,000 was allocated to the budget and the scheme was originally intended to be a refurbishment, decoration and alterations. However, the scope of the project grew as part of its intended use to meet the on-going demand for temporary accommodation in the district which was a significant cost to the Council.
- Unclear decision-making responsibilities, particularly where additional funding was required to complete the project.
- The relevant experience of key Officers supporting the project.

#### **Financial Approval**

- The contract variation instructions were recorded on the contractor's system but not recorded on TDC systems or a project management chart.
- Contract variations were informed by the contractor after they identified issues and then notifying the Council, who then assessed the request and a price given by the contractor in order to complete those variations.
- Some issues may not have been foreseeable and therefore not included in the original specification.

- Overspends first came to light around 8 February 2024.
- Some issues could have been addressed earlier in the project.
- The process for managing variation orders was controlled by the contractor not the Council.
- Variations were approved without a financial quote being provided upfront by the contractor, along with details of the work required to allow time to review and inspect before approval.
- Misunderstanding of the requirements for quote documentation.

### **Unauthorised Spend**

As reported to Cabinet in May 2024, the total unauthorised spend on the project equates to £386,535.12.

Some key points / issues identified included:

- Misunderstanding of approvals, budget availability and decisions required.
- Timing of updates to Senior managers
- The project budget contingency was not reassessed

### **Summary and Conclusions**

Although it is felt that the Council's underlying / current governance arrangements and internal control processes are reasonable / adequate, there are a number of issues and recommendations identified regarding the project, with the aim of strengthen such arrangements as follows:

- The scoping, management and adherence to the Council's Governance Framework.
- Specification - specifications must be robust, complete and clear. Specifications should be compiled by service area experts, and if these cannot be provided internally then services should be sought externally with an associated budget. Sufficient capacity should also be considered and allocated, with management oversight. A thoroughly prepared specification would negate the requirement for significant and numerous contract variations, although minor variations may still be expected.
- Contingency - contingency should not only be considered at the beginning of the project, but it should also be considered when tenders are returned as this may impact on the overall budget and therefore the level of contingency required. It is good practice to apportion between 10-20% of the overall budget dependant on the scale of the project.
- Project management - the project should report progress against time, budget and potential issues. Mechanisms within services need to be in place to ensure that senior management are aware when significant issues arise, in this instance substantial variations to the contract. Although regular meetings were occurring, these were without structure to the agenda and did not necessarily demonstrate the financial commitment of the project, and therefore opportunities to identify potential unauthorised earlier were missed.
- Decision making - constitutional requirements do not appear to have been adequately considered during the life of this project. It is therefore recommended that for future projects, all project leads review and consider constitutional requirements at both the planning stage and during the implementation of the project, to ensure that any statutory requirements are followed in addition to the contract terms.

- Training - adequate training for Officers should be provided before undertaking any project, including specification writing, project management and contract management, especially of this scale. Appropriate supervision and support should also be provided at the inception of the project.
- Strategic oversight – a Project Board will provide a consistent strategic approach to all projects going forward. All project managers are to report progress against targets including any potential issues that may occur. When providing financial information, this should also include amounts already committed, potentially using GANT charts may help. The minimum expectations of reporting standards should be agreed from the outset.
- Contract management - the Council's interests must be prioritised when managing contracts. This includes using the Council's own processes and systems and not relying on contractor processes and direction, as it may be difficult to validate information and ensure that we comply with constitutional and statutory requirements. Control must be retained by the Council, even if the expertise lies with the contractor.
- Contract variation - contract variations must be limited by ensuring a robust specification is produced (as aforementioned). Variations should not be approved unless quotations or financial impact is provided in advance as well as being challenged when requested by a contractor. It may be beneficial to limit variation orders that can be approved in line with current constitutional requirements. The correct financial approvals must be sought in order to negate unauthorised spend.
- Unauthorised spend - managers should be aware of their constitutional responsibilities when authorising spend. Once Cabinet has approved an overall budget, managers should update and request additional funding if necessary from the Portfolio Holder / Cabinet, at the earliest opportunity prior to committing the Council to further expenditure.
- To include sessions within future staff inductions to draw attention to the Council's high level governance arrangements, policies and procedures. This could be complemented via a six monthly induction 'follow up' session aimed at senior managers that can provide further detail in key areas such as budget and financial responsibilities long with procurement and other requirements set out within the Council's Constitution.

***In addition to the above and based on the detailed findings / outcomes, the matter has been referred for review against the Council's HR policies to determine any further necessary action.***