

Internal Audit Report

Valley Gardens Phase 3

Assignment Lead: Alex McLaren, Principal Auditor
Assignment Manager: Mark Dallen, Audit Manager
Prepared for: Brighton & Hove City Council
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Brighton & Hove City Council - Internal Audit Key Contact Information

Chief Internal Auditor: Russell Banks, ☎ 01273 481447, ✉ russell.banks@eastsussex.gov.uk

Audit Manager: Mark Dallen, ☎ 01273 291314, ✉ mark.dallen@brighton-hove.gov.uk

Anti-Fraud Hotline: ☎ 01273 291700, ✉ anti-fraud@brighton-hove.gov.uk

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1. Introduction

- 1.1. Valley Gardens is the name given to the green spaces that run from St Peter's Church to the Palace Pier.
- 1.2. The northern section of Valley Gardens is referred to as 'Phase 1 (St Peter's)' and 'Phase 2 (Victoria Gardens)'. Phase 3 refers to the area from the Old Steine to the Palace Pier roundabout, the estimated cost of Phase 3 in the council's business case is £7.84 million.
- 1.3. The core objectives for Valley Gardens Phase 3 (VG3) were approved by the Environment, Transport and Sustainability (ETS) committee in June 2018. Design options for the area were then developed and a single, preferred design option was presented to the committee on 9 October 2018, as was explained within the June 2018 report. Committee members gave approval for Council officers to undertake further development work on the design and hold a public consultation.
- 1.4. A public consultation took place from 15 October to 25 November 2018, the results of which were reported to ETS committee in January 2019. Approval of the Final Preliminary Design of Phase 3 was given by the council's ETS Committee in February 2019.
- 1.5. This desk top review was requested by Councillors at the July 2019 Audit & Standards Committee, following the receipt of a letter presented by Cllr. Lee Wares, setting out a number of concerns regarding the management of the project and the information provided to members. This audit is therefore an additional review to the agreed internal audit plan for 2019/20. A copy of this letter is separately attached as Annex B.

2. Scope

- 2.1. The Audit & Standards Committee requested 'a desktop audit limited in scope to the questions of whether the Council had correctly followed processes and procedures'. Our interpretation of this request was that our review should focus on making sure that appropriate decision making arrangements were in place, including the accuracy and transparency of information provided to Members. Specifically our review focused on the following which align to concerns raised in Cllr. Wares letter:
 1. Whether information about £6m of LEP funding, as contained in the Committee report (7 February), was correct at the time of report writing.
 2. To consider whether accurate information has been communicated to Members about the implications of delays on the funding of the project.
 3. To identify whether key projects which closely relate to the VG3 have been transparently reported to Members and the LEP.
 4. To ascertain if there has been any traffic or environment assessment of the VG3 project.
 5. To review the approach taken to stakeholder engagement and the consultation process relating to VG3.

3. Methodology

3.1. This review has focussed on an examination and analysis of the following:

- Meeting with Cllr Lee Wares to discuss the letter in more detail;
- Review of agendas, reports, and minutes (including part 2) from BHCC ETS committee meetings;
- Review of minutes from the LEP committee and board meetings;
- Records of correspondence between the Council and the LEP;
- Interviews with key officers.

4. Management Summary

4.1. We have concluded that appropriate decision making processes have been followed in relation to the areas below.

Status of the Grant Award

4.2. The Coast to Capital (C2C) Local Enterprise Partnership (LEP) considered and approved the business case for Phase 3 of the Valley Gardens project (VG3) and confirmed a £6m allocation from the Local Growth Fund (LGF) at their 22/01/2019 board meeting, with the remaining project cost of £1.84 m to be contributed by or through the Council. Access to the LGF funding was subject to final conditions of the grant being finalised with the LEP's Investment Committee, and completion of a legal funding agreement with the council.

4.3. On 01/02/2019 the LEP sent a letter to the Council confirming its conditions for the grant award. These were principally to seek assurance from the Monitoring Officer that the Council had approached their consultation in compliance with statutory requirements, that the Final Preliminary Design met the requirements of all relevant statutory legislation, and that public comments; including those of the Valley Gardens Forum, had been taken into account in the development of the scheme.

4.4. The final preliminary design option was taken to the council's Environment, Transport and Sustainability (ETS) committee on 07/02/2019. This meeting was to seek member approval for the design to proceed to the detailed design stage, and for officers to commence procurements relating to this. The committee report pack included a summary report detailing the results of the consultation taken on the proposals, as well as a summary of design changes that had been implemented as a result of feedback received.

4.5. The reports pack and minutes are clear that funding had been approved but was subject to a funding agreement being reached. This is consistent with the LEP's own board meeting minutes from 22/01/2019 which stated that the revised business case had been approved and that conditions would be set out in the LGF grant award letter.

4.6. In an email the LEP wrote to the Executive Director-Economy Environment & Culture on 24/01/2019. They stated: *"We are delighted to inform you that the Brighton Valley Gardens Phase 3 project has been approved for funding of £6,000,000 subject to final conditions of the grant being finalised with the Investment Committee. These will be*

communicated with you and drawn up in the funding agreement once confirmed”.

- 4.7. We also note that the LEP sent an email sent to the Assistant Director-City Transport on 08/02/2019 with a draft funding agreement. This was prior to the Council’s response to their pre-conditions letter. The email states *“Whilst you work through the conditions as set out in the letter for the Brighton Valley Gardens Phase 3 project, we thought it would be a good idea to start drafting the funding agreement, so then once the conditions have been met we can progress quickly”.*
- 4.8. Based on the above there is no evidence of a shortfall with the information that Members received about the status of the LEP funding at the ETS committee meeting on 07/02/2019.

Funding Drawdown Deadline

- 4.9. Members were asked to consider approval at the 07/02/2019 ETS meeting for the final preliminary design, to enable the project to continue in line with the approved delivery programme. The programme indicated that the project was expected to be substantially completed by March 2021, and therefore the funding drawdown deadline of March 2021 would also be met.
- 4.10. In an email from the LEP to the Executive Director-Economy Environment & Culture on 22/07/2019, they state that the current situation is that LGF monies must be drawn down by March 2021. They do acknowledge that recent Government advice allows scope for funds to be spent after this deadline, but that would only be in very exceptional circumstances, and that their Board retains the right to withdraw and reallocate funding on schemes that are unlikely to draw down funding before March 2021.
- 4.11. The LEP’s email also states: *“It should be noted that to date no projects have been granted flexibility funding to be spent after March 2021 and the likelihood that any projects will be, is considered by officers to be very unlikely”.*
- 4.12. We also note that the LEP’s own Funding Withdrawal Protocol states that funding could be removed if a March 2021 drawdown is not met.
- 4.13. We therefore conclude that there is no evidence that the advised March 2021 deadline as contained in the 07/02/2019 ETS committee report was not properly communicated.

Interlinking of Projects

- 4.14. A number of emerging 'sub projects' have been raised as potentially impacting upon the VG3 business case. Two of these that were identified in Cllr Wares’ letter were:
- 1) The proposed reversal of the existing Traffic Regulation Order (TRO) which prohibits right turns coming out of Little East Street onto the A259.
 - 2) The proposed installation of traffic signals at the top and bottom of Dukes Mound, where the road ramp links the A259 and Madeira Drive.

- 4.15. Regarding point 1 above, proposals for the TRO reversal i.e to remove the right turn ban, came out of the consultation process, where it was identified that traffic exiting The Lanes via Little East Street that wanted to travel West would have to use a different route. This could include travelling further east before being able to safely turn around, in the absence of being able to use the roundabout to perform a U-turn. This solution was presented to members in the February 2019 ETS committee together with all additions and refinements to the preferred design following the consultation process.
- 4.16. The Council's consultants to the project Mott MacDonald advised the February 2019 ETS committee that traffic currently performing a U-turn on the roundabout accounted for less than 0.5% of all traffic using the junction and as such, the impact on traffic flow was deemed to be minimal. We understand from the Head of Transport Policy & Strategy that the cost of the TRO reversal could be expected to be relatively minor (possibly up to £10k).
- 4.17. The Duke's Mound traffic signals (point 2 above) are also a key requirement for the council's Waterfront project enabling works. This is a separate major project which already has approved grant funding of £12.1m from the LEP. We understand that the need for these works was identified early on in the development of the Waterfront project. The Waterfront project was identified within the project dependencies section of the VG3 business case.
- 4.18. During the progression of the VG3 preferred design, members have been appraised of the requirement of, and revisions to, the Duke's Mound junctions, including in the February 2019 ETS committee where the minutes (para 66.62) state "*..the Committee agrees that officers progress design work for the proposed improvements to the A259/Duke's Mound/Madeira Drive junctions, in liaison with the council's Waterfront project team*".
- 4.19. The Duke's Mound traffic signalling was, at the time of this committee, estimated to cost in the region of £500k. Further consideration of the design as part of the Waterfront project has meant that this estimate has since risen to £600k-£800k. However, this work is being funded through the Waterfront Project enabling works grant award. As a result we understand that the signalling works would be installed with or without VG3.
- 4.20. Overall we have not identified any significant shortfall in communications relating to the interlinking of these other projects.

Traffic and Environmental Considerations

- 4.21. There is evidence that traffic modelling was undertaken by the council's consultants Mott MacDonald both as part of the development process for the various VG3 designs, to feed into decision making for the preliminary design, and for the post-consultation revised preliminary design.
- 4.22. Objections have been raised that the traffic modelling conducted to date has not included the impact of the Duke's Mound signalling and that this may impact journey times for road users. Advice was given to ETS committee in February 2019 by the Council's consultants for the scheme that, while the traffic modelling had not included

the proposed signalling, it did include displaced traffic that would have otherwise exited from Madeira Drive on to the roundabout. At this same committee the Executive Director, Economy, Environment & Culture stated that this was a matter that had recently arisen through the consultation and the issue would be looked at as part of the detailed design at a later stage.

- 4.23. Environmental impacts have been assessed and quantified, and were reported by Mott MacDonald in Appendix K as part of their stage 2 report dated February 2019. The report begins by explaining that a full statutory Environmental Impact Assessment is not required in accordance with DMRB (Design Manual for Roads and Bridges) guidance, however, a number of potential environmental impacts were still assessed as part of a screening process. It was concluded that the scheme is not expected to have significant adverse effects, and has the potential to bring a number of benefits.
- 4.24. It is confirmed that traffic modelling and environmental considerations have last been assessed post consultation against the final preliminary design, and that there have been suggested refinements to the design since this stage.
- 4.25. Based on our desktop review there is evidence that traffic modelling and environmental considerations have been considered and documented in relation to this project.

Stakeholder Engagement and Consultation

- 4.26. The consultation process for the preferred design option was undertaken for VG3 was conducted in October and November 2018.
- 4.27. As well as being published on the consultation portal on the council's website, the questionnaire was heavily promoted in a series of proactive drives, including use of social media, staffed exhibitions, and a mail-out to over 1,300 addresses. This indicates that an extensive consultation process with the public was conducted, as well as consultation with private and voluntary sector organisations. As a result of the consultation, a number of design revisions were made to accommodate the feedback and opinions of respondents and other stakeholders, this was then presented to ETS committee in February 2019 as the final, preliminary design.
- 4.28. We note that the consultation questionnaire explicitly elicited from respondents whether they agreed/disagreed/neither with questions over whether the proposals improved: walking in the area, cycling in the area, and public transport in the area. The question over whether the proposals improved traffic flows and road safety was freetext, and as such it could be perceived that the range of answers provided may have provided less clarity over respondents views on the proposals relating to vehicular traffic.
- 4.29. We note that the focus of the project is defined as one which aims to significantly improve upon the existing design and provision for sustainable transport options of walking, cycling, and buses. While the consultation is focussed on whether the Phase 3 design met these specific areas of improvement, opinion has been sought from other users such as those who use the area to travel by vehicle, as well as with multiple stakeholders.

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- 4.30. In seeking to assess whether the Council was transparent with members over the focus of the project, we note that the VG3 report that went to the June 2018 ETS committee specifically communicates the eight design objectives as improving walking, cycling and public transport in the area, as well as improving accessibility, road safety, vehicle congestion and to enhance the environment and the general public realm.
- 4.31. The primary challenge of the current Valley Gardens area according to the VG3 business case is described as *"the severance caused by inefficient land use and an overly complex road layout that favours vehicular traffic to the detriment of pedestrians and cyclists"*. Collision data is also reported for the period 2013 to 2017 which shows that two thirds of those people who received serious injury as a result of reported collisions were cyclists and pedestrians.
- 4.32. In addition, we note that the project aligns with the policy within the BHCC City Plan Part One, and a number of the strategic objectives contained in BHCC's current Transport Strategy in its Local Transport Plan.
- 4.33. Finally, in order to qualify for LEP funding, a project must meet one of the LEP's defined criteria for investment projects. VG3 is aligned to the following one: *"Increased capacity in sustainable transport and 'key' arterial routes where there are 'bottlenecks', together with flood resilience and digital infrastructure investment"*.
- 4.34. From the documentation we reviewed there is evidence of significant stakeholder engagement and consultation processes which were linked to the purpose and objectives of this project.

5. Acknowledgements

- 5.1. We would like to thank all staff that provided assistance during the course of this audit.

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Management Responsibilities

The matters raised in this report are only those which came to our attention during our internal audit work and are not necessarily a comprehensive statement of all the weaknesses that exist, or of all the improvements that may be required.

Internal control systems, no matter how well designed and operated, are affected by inherent limitations. These include the possibility of poor judgment in decision-making, human error, control processes being deliberately circumvented by employees and others, management overriding controls and the occurrence of unforeseeable circumstances.

This report, and our work, should not be taken as a substitute for management's responsibilities for the application of sound business practices. We emphasise that it is management's responsibility to develop and maintain sound systems of risk management, internal control and governance and for the prevention and detection of irregularities and fraud. Internal Audit work should not be seen as a substitute for management's responsibilities for the design and operation of these systems.

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Letter presented by Cllr. Lee Wares at the July 2019 Audit & Standards Committee

Geoff Raw – Chief Executive
Brighton & Hove City Council

2nd July 2019

Dear Geoff

I am submitting this letter under Council Procedure Rule 23.3 to be included on the agenda for the Audit and Standards Committee meeting of 23rd July 2019.

I respectfully request that Audit and Standards Committee commission an Audit report for consideration by the Audit and Standards Committee or such other relevant Committee regarding matters relating to the Valley Gardens Phase 3 (VG3) project.

My primary reasons for this request include, but are not limited to, the following: -

1. In the report dated 7th February 2019 to the Environment, Transport and Sustainability Committee (ETS) several references were made (paras 1.2, 7.1, 7.7 as examples) to funding from the Local Enterprise Partnership (LEP) specifically either stating that £6.0m from the LEP had been secured and/or was subject to a funding agreement. This was further reinforced by the Chair of ETS who in answer to questions from the public advised that "The council's Business Case.....has achieved the release of the 6 million pounds" (minutes dated 19th March, para 63.22, page 7). In further answer to a public question about LEP conditions the Chair advised "We have received some communication from the LEP and are studying that in detail and we will be making our comments back to them" (minutes dated 19th March 2019, para 63.12 page 5).

The report and comments, that influenced Member debate and decision-making process on the substantive item to progress VG3, sought to express or strongly imply that funding had been secured and that the LEP's communication was somehow "business as usual".

The reality of the situation as known to the Administration prior to the Special ETS Committee sitting on the 7th February 2019 was that the Council had only secured funding in principle and that the actual decision to fund was down to the LEP's Investment Committee (IC) that to this day, has yet to convene to consider granting funding (or not) and has not set a date to do so. Further, it has subsequently come to light that the LEP correspondence referred to was in fact a letter expressing specific conditions on the Council that had to be satisfied before the funding agreement could be signed subject still to the IC granting the funds. I understand there is further correspondence in existence with the LEP questioning the Council's responses to the conditions.

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Further, during the 25th June 2019 ETS Committee it was acknowledged that funding had not yet been granted and that correspondence with the LEP had not been shared with ETS Members save only for information that the Administration considered necessary for Members to be aware of such that they could make the “correct decision”.

My concern is that the decision on the 7th February 2019 may be unsafe due to the Administration portraying information in such a manner and not sharing information with ETS members that may otherwise have resulted in a different outcome or enabled amendments and/or Notices of Motion to be tabled to reflect the true position as at 7th February 2019.

2. The report dated 7th February 2019 and during discussion at the same ETS Committee (and subsequently thereafter on numerous occasions, including at later ETS Committees) the Administration has briefed that any delays to the decision would risk the LEP funding due to a draw-down date of March 2021. Para 7.17 of the 7th February 2019 report is offered as an example where it states “any significant delay would be a critical project risk in terms of financing the project given the need to drawdown the LGF funding by the end of March 2021”.

In recent correspondence produced by the LEP they have confirmed that there is no “hard deadline” and that subject to certain conditions, they could for example consider “Capital Swaps”.

My concern is that by continuously reinforcing the so-called critical risk deadline, Members might have been compelled to making decisions that they otherwise might not have. It would be reasonable to presume that the Council, having been the recipient of many LEP grants awards, would be aware of how the LEP would consider funding and should have included the options in the reports and in answer to subsequent questions.

3. VG3 is being “contained” to the original project boundary. However, as the project has developed, in ensuring that “preferred option 1” can actually be delivered it has become necessary for “sub-projects” to be created. For example, this relates to major junction works at Duke’s Mound (DM)/A259 and consideration of reversing previous Traffic Regulation Orders (TROs) to allow right turns onto the A259 west of the Aquarium roundabout. Such sub-projects are presently being progressed independent of the VG3 project notwithstanding that absent them being done, VG3 as presently proposed will fail. Officers in Committee have confirmed that VG3 and DM/ TRO changes are inextricably linked.

Irrespective of the Waterfront Project Enabling Works (WFP) being considered to fund DM, this appears to mask the true cost of VG3 and would demonstratively alter the Business Case that the Council presented to the LEP. It is likely the financial cost/benefit ratio would be negative.

My concern is that to enable VG3 to progress, the entirety of the project impact and cost is not being consolidated and that Members and the LEP have no over-arching perspective of the project or ability to judge its true financial/social/economic/environmental impact. Further, residents and businesses in the expanded project boundary area have not been party to any

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consultation with the Administration confirming on the 25th June 2019 that it will not allow a consultation regarding DM.

4. VG3 preferred option 1 that is progressing to detailed design stage was developed following the agreement of certain design principles, traffic studies and the feedback from a public consultation. However, preferred option 1 is a fundamental revision of the design offered for public consultation that now includes DM, the addition of a 5th traffic lane on the east side of the Old Steine (south bound bus route) and the relocation of the dedicated cycle lane to the west side impacting event space planning and design.

This revised scheme has not had the benefit of any environmental impact studies (nor did the original), has had no traffic modelling applied and has no assessment of traffic displacement; in ETS Committee officers advised that they did not know or understand how displaced traffic would function or disperse. Further and notwithstanding these seismic amendments, there will be no public consultation.

My concern is that the present design, not having the benefit of any traffic and environmental assessments and public involvement, cannot possibly be assessed as either being a “good” or “bad” solution. It is impossible to assess the impact on the original Business Case and it is impossible to judge the views and feedback of stakeholders. The project has morphed into something substantially different and should be subject to the same tests and scrutiny as the original designs and principles.

5. During October to November 2018 the Administration conducted a public consultation of which the results were the primary driver behind the present preferred option 1 that is progressing to the detailed design stage.

Because of that consultation, significant public disquiet has arisen as to the notification of that consultation and the subsequent dismissal by the Administration of a public petition requesting further consultation.

Further, the consultation questionnaire itself appears to be flawed in that rather than seeking unfettered opinion, it asked specific questions such as has the design improved cycling, walking and accessibility provision. Such questions it appears were designed to solicit a positive response as opposed to canvassing opinion. In addition, in reporting the results to the 7th February 2019 ETS Committee, the Administration sought to highlight responses that supported the scheme (albeit the questions were contrived) and under-play responses that were negative such as most respondents objecting to the removal of the Aquarium roundabout.

My concern is that the consultation thus far conducted was biased in its presentation and remains unsound in that subsequent public opinion is being ignored given that the Administration is filtering out negative responses without due and proper regard. This is further amplified given the project expansion discussed above and the substantial changes to the design that have now occurred. Failure to involve stakeholders in a full and comprehensive

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manner is to deny public opinion, subvert the democratic process and potentially lead somebody to conclude that the consultation was mere “tick boxing” rather than a genuine exercise.

It is conceded that the Administration is proposing to consult on the TRO related to VG3. However, it appears to have used this position to suggest to the public that there is further consultation in such a manner that will allow additional stakeholder engagement on the scheme whereas the reality is that the TRO consultation is on the technical aspects of, for example, where double yellow lines or taxi ranks might be positioned as opposed to the overall scheme itself.

As the Committee charged with overseeing compliance with the code of Corporate Governance, a key aspect of which includes appropriate adherence to the constitutional decision-making processes, we would urge the Committee to commission this report so that it can either satisfy itself that everything is being done properly or ensure that any shortcomings are addressed by the relevant committee or officer.

Yours sincerely

Cllr. Lee Wares

