

# LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>CABINET</b>	
<b>DATE OF DECISION</b>	24 <sup>th</sup> July 2024	
<b>REPORT TITLE:</b>	<b>Bus Shelter Delivery Programme</b>	
<b>CORPORATE DIRECTOR / DIRECTOR:</b>	<b>Nick Hibberd, Corporate Director of Sustainable Communities, Regeneration &amp; Economic Recovery Director of Streets &amp; Environment Karen Agbabiaka</b>	
<b>LEAD OFFICER:</b>	<b>Nick Hibberd, Corporate Director of Sustainable Communities, Regeneration &amp; Economic Recovery Ian Lilley – PFI Contracts Manager and report author Email:lan.Lilley@Croydon.gov.uk <a href="tel:02087266000">Tel:02087266000</a> ext:27265</b>	
<b>LEAD MEMBER:</b>	<b>Councillor Scott Roche, Cabinet Member for Streets and Environment</b>	
<b>KEY DECISION?</b>	<b>Yes</b>	Decision significantly impacts on communities living or working in an area comprising two or more wards Key decision number : 1424EM
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>NO</b>	N/A
<b>WARDS AFFECTED:</b>	All	

## 1. SUMMARY OF REPORT

- 1.1 This report sets out the background and a recommended strategic direction for the provision of bus shelters for which Croydon Council has responsibility in the borough.
- 1.2 This report sets out proposals for progressing with the replacement of bus shelters, financial implications of the proposed action and decision, and an analysis of the risk associated with the shelters.

## 2. RECOMMENDATIONS

For the reasons as set out in this report, Cabinet is RECOMMENDED:

- 2.1 To Agree to progress with Option Five ‘TfL to use the London Passenger Transport Act 1934 to give them the right to provide, install, maintain and clean bus shelters and retain any advertising revenue of sites in the borough.’
- 2.2 To Agree to delegate authority to the Corporate Director of Sustainable Communities, Regeneration and Economic Recovery, in consultation with the Executive Mayor and

Cabinet Member for Streets and Environment, to sign the Memorandum of Understanding (MOU) between TfL and LB Croydon.

- 2.4 To Agree to proceed with the development of the procurement strategy for the remaining Out of Home (OOH) advertising opportunities.

### **3. REASONS FOR RECOMMENDATIONS**

- 3.1 Croydon Council retain a financial risk for the provision of shelters. The quantum of that risk in financial terms is a capital/borrowing requirement of at least £2-2.5m and, under the current arrangements, this will be a recurring risk into the future.
- 3.2 The operational risk is apparent with the recent failed Valo Smart City UK Ltd contract resulting in non-provision of shelters for the last 4 years on 114 sites across the borough and the income from advertising revenue that the contractor had guaranteed the Council. TfL's partner is ready and able to install to a reduced timetable than that expected and their knowledge and expertise in this area will help us manage the design phase more effectively.
- 3.3 Both the financial and the operational risks can be managed down to a negligible level by pursuing the recommended course of action. The management of these risks will not impact the 2024/25 budget adversely nor the Medium Term Financial Strategy as no revenue assumption has been made against the sites in question.
- 3.4 Provision of bus shelters is not a core Council deliverable in London, Croydon Council should place the risk of provision with the party best able to manage it. In London's case that is Transport for London (TfL).
- 3.5 TfL and its partners have the skills, experience and capability to deliver the shelters Croydon Council require in a timely manner. It is their core business and TfL have confirmed the willingness and capacity to assume responsibility for delivery of this programme commencing in the financial year of 2024/25.
- 3.6 The delivery of this preferred option will be undertaken via a memorandum of understanding between TfL and LB Croydon. Both TfL and LB Croydon legal and procurement departments have confirmed that this is a viable option and is fully supported.

### **4. BACKGROUND AND DETAILS**

- 4.1 The street furniture, bus shelters and associated advertising contract were procured in 2020 and a concession contract was awarded in November 2021. Before a new procurement was secured the Council at the time allowed the removal of all existing bus shelters well in advance of new shelters being delivered.
- 4.2 New shelters were due to be provided as part of the Valo Smart City contract after a procurement process.
- 4.3 Despite two years of pushing and taking action with the aim of getting the contractor to deliver on their contractual obligations. Valo failed to deliver, and no replacement bus

shelters, or digital infrastructure have been installed in the borough. As a result, the Council took immediate steps to terminate the contract in October 2023 and it was agreed to commence a new procurement process. Croydon Council is now pursuing legal action against Valo Smart City UK Ltd to recover its losses.

**4.4** Bus shelters are important infrastructure and the Council considered five options to take forward their delivery:

- **Option One** 'do nothing'
- **Option Two** 'LBC Option - Concession 10 years'
- **Option Three** 'LBC Option - Concession 15 years'
- **Option Four** 'LBC Capital Option' and
- **Option Five** 'TfL Option'

For the re-procurement, the Council's initial direction led to Option Two 'LBC Option - Concession 10 years'. The provision, installation, maintenance and cleaning of bus shelters at the identified locations and derived income from the associated advertising under a concession contract for a period of 10 years starting on or before 1st October 2024. The key drivers for this strategy were not to increase the indebtedness of the Council and to maximise revenue from the wider (non-shelter) advertising estate.

**4.5** The approach was to isolate the provision, installation, maintenance, cleaning and associated advertising of the shelters for which Croydon Council has responsibility from the remainder of the 'Out of Home' advertising (OOH) opportunities. This approach was driven by the fact that the bus shelter provision space is dominated by a restricted number of suppliers and the capital demand of providing the shelters impacting advertising returns for the first 10-year concession. The assumption was that the following 10-year concession contract would be considerably more profitable without capital costs impacting returns. By opening up the wider OOH advertising contract to a wider pool of providers the Council was seeking to maximise the revenue created by its higher value sites, for example, in primary High St. locations.

**4.6** Following a pre-market engagement exercise, it became clear that a 10-year contract would not be sufficiently attractive to the market and that a minimum of 15 years would be required. This would have the impact of reducing the revenue return to the Council to a level that does not reflect the risk of provision, so the preferred option is now **Option Five - 'TfL Option'**. LBC would, under the London Passenger Transport Act 1934, grant TfL the right to provide, install, maintain, and clean bus shelters and use the advertising revenue to offset their costs.

**4.7** This option would transfer the risk of provision to TfL. Subsequently this will free up Croydon to bring forward the procurement of the remainder of the OOH opportunities.

**4.8** The benefits of this option are that the full risk is transferred to TfL. There will be no ongoing contract management input required by Croydon Council, no capital expenditure or increase in indebtedness required and the anticipated roll out timetable compressed. This is TfL's core function so there will be minimal disruption. The wider OOH returns will not be impacted by shelter capitalisation costs and this gives the Council the opportunity to bring forward the procurement of higher value OOH advertising. However, the disbenefit is that there will be no revenue return to the Council from the bus shelters advertising.

## 5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 Option One ‘Do nothing’** – This was not an option seriously considered due to the negative impact on the residents of Croydon caused by inclement weather and the disincentive to use the bus network and subsequent impact on congestion and carbon reduction targets.
- 5.2 Option Two ‘LBC Option- Concession 10 years’** –This option would be delivered under a concession contract where the provision, installation, maintenance, and cleaning of bus shelters at the identified locations and derived income from the associated advertising under a concession contract for a period of 10 years starting on or before 1st October 2024. This option was the Council’s initial working strategy. However, following a pre-market engagement involving five companies working in this space it became apparent that the contract duration was insufficient to be attractive to the market and that a minimum of 15 years would be required. The original purpose of the 10-year contract length was to ensure that the Council would benefit from 10 years of advertising returns not impacted by the capitalisation costs of the shelters in every second iteration of the contract. This is due to the fact that the asset would be fully paid for in the first 10 years of the life of a shelter leaving the second 10 years of the shelter life free of such cost. Once it became clear that this was not possible the risk/benefit balance swung sufficiently to discount this option.
- 5.3 Option Three ‘LBC Concession 15 years’** This option involves going to the market for a 15-year concession contract for bus shelter provision, installation, maintenance, cleaning, and associated advertising as described in Option Two. This option was discounted due to any advertising returns being impacted by the capitalisation costs of the shelters in each iteration of the concession. This is due to the fact that each iteration of future contracts would have some, or all, of the cost of providing the shelter within it. This effectively negates any benefit versus the ongoing risk of provision.
- 5.4 Option Four ‘LBC Capital Option-’** – This option would involve the Council borrowing circa £2-£2.5m plus margins of capital to engage a provider to install the bus shelters at the Council’s cost that involves the procurement, maintenance and cleaning contract. In addition to going out to the market separately for all Out of Home advertising (standalone boards) including shelter advertising. This option was discounted due to the capital funds (and likely borrowing) for which the Council would be liable, the complexity of the multiple contract scenario and the fact that the Council would retain the full risk of replacement.

## 6. CONSULTATION

- 6.1** Pre-market consultation exercise was undertaken via the procurement portal. This took the form of an engagement questionnaire that was responded to by five potential providers.
- 6.2** Scrutiny – These proposals will be going to the Scrutiny Sub-Committee for Streets & Environment, on the 22nd July 2024. Should there be any recommendations, these will be provided to the Executive via a supplementary Appendix (B) to this Cabinet agenda item for consideration at the 24th of July Cabinet Meeting

## **7. CONTRIBUTION TO EXECUTIVE MAYOR'S BUSINESS PLAN**

### **7.1 Outcome: A place of opportunity,**

Promoting increased utilisation of public transport and ensuring the free flow of traffic.

### **7.2 Outcome: Cleaner, safer and healthier,**

Provision of bus shelters can contribute to the reduction of carbon emissions through the promotion of public transport utilisation.

## **8. IMPLICATIONS**

### **8.1 FINANCIAL IMPLICATIONS**

8.1.1 Neither the 2024/5 budget nor the Medium-Term Financial Strategy assumed revenue from the shelters nor any cost. The net impact of this proposal is zero and the indebtedness of the Council is unaffected.

#### **8.1.2 Revenue and Capital consequences of report recommendation**

The revenue and capital budgets are unaffected.

Comments approved by Finance Manager (Nish Narendran) on behalf of the Director of Finance. (Date 24/05/2024)

### **8.2 Risk Implications**

- The quantum risk in financial terms is £2-2.5m and, under the current arrangements, this will be a recurring risk into the future.
- The operational risk has been brought into sharp relief with recent events resulting in non-provision for the last 4 years across 114 sites across the borough.
- TfL's partner is ready and able to install and their knowledge and expertise in this area will help us manage the design phase more effectively, thus reducing the risk of roll out delay
- Reputational risk to the Council of continued non provision is clear and present.

### **8.3 LEGAL IMPLICATIONS**

Under s104 of the London Passenger Transport Act 1934 TfL may erect and maintain bus shelters at suitable places along its bus route network for the benefit of passengers subject to obtaining the consent of the local authority within which any highway where the bus shelters will be located. In granting its consent, the local authority may do so subject to reasonable terms and conditions as it may think fit.

The display of advertisements is subject to a separate consent process within the planning system. This is principally set out in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. Any applications for advertisements on bus shelters will be subject to these regulations.

There are no procurement law implications for the Council in relation to TfL's exercise of rights in respect of the bus shelters as set out in this report.

Any procurement of OOH advertising will need to be carried out in compliance with the Council's governance requirements and procurement legislation.

Comments approved on by Head of Commercial, Housing & Litigation Law on behalf of the Director of Legal Services and Monitoring Officer. (Date 1/7/24)

## **8.4 EQUALITIES IMPLICATIONS**

**8.4.1** Under the Public Sector Equality Duty (PSED) of Equality Act 2010, decision makers must evidence consideration of any potential impacts of proposals on groups who share the protected characteristics, before decisions are taken. This includes any decisions relating to how authorities act as employers; how they develop, evaluate and review policies; how they design, deliver and evaluate services, and also how they commission and procure services from others.

**8.4.2** Section 149 of the Act requires public bodies to have due regard to the need to:  
Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act.  
Advance equality of opportunity between people who share a protected characteristic  
Foster good relations between people who share a protected characteristic and people who do not share it.

**8.4.3** Comments approved by Ken Orlukwu, Senior Equalities Officer, on behalf of Helen Reeves, Head of Strategy & Policy on 06/06/2024

## **8.5 HUMAN RESOURCES IMPLICATIONS**

None – no staff are currently employed to undertake this service so TUPE does not apply.

Comments approved by Jennifer Sankar, Head of HR, Housing Directorate & SCRER Director, for and on behalf of Dean Shoesmith, Chief People Officer. (Date 22/05/2024)

## **8.6 PROCUREMENT IMPLICATIONS**

**8.6.1** There is no procurement law impediment to Croydon Council pursuing the course of action described in this report. Procurement have provided support for this project to date; however if the recommended option is taken up this does not require procurement activity for the bus shelter and advertising. The OOH Advertising will be commissioned separately in accordance with the Council's governance requirements.

**8.6.2** Approved by: Matthew Devan, Strategic Procurement Manager on behalf of the Head of Procurement. (Date 28/05/24)

## **9. APPENDICES**

*Appendix A EQIA*

*Appendix B - Scrutiny Recommendations from 22nd July Scrutiny Sub-Committee for Streets & Environment (If any)*