

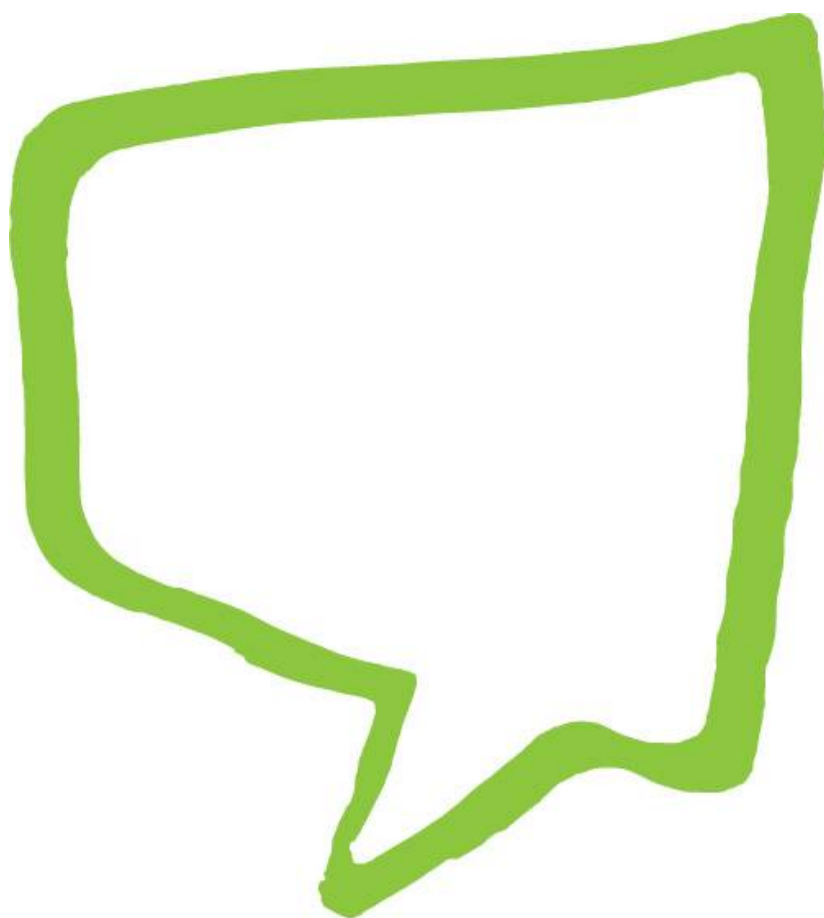
# Colchester Visual Arts Facility

**Follow up**

Colchester Borough Council

Audit 2009/10

June 2010



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# Background

- 1 The proposal to develop a visual arts facility in Colchester was drawn up in 2003. It was planned to provide new accommodation for 'firstsite', a contemporary visual arts organisation based in Colchester. Work commenced in 2006, but was halted in January 2008 because of a dispute between Colchester Borough Council (the Council), which is the client lead for the project, and the contractor at that time, as to whether the value of work completed had exceeded the financial cap of £12.736 million allocated to complete the building.
- 2 An initial view was taken that the expected costs of completing the building would exceed the funds made available by £2 million. However subsequent work by quantity surveyors, in the summer of 2008 identified further risks and costs which projected an additional shortfall of £7.6 million, increasing the total project costs, that is a completed and functional building, to around £25.5 million. In September 2008, after prolonged negotiation, the Council entered into a supplemental contract with its contractor to make the building airtight and watertight at a total cost of £14.22 million for the building element of the work with an agreed completion date of 22 May 2009.
- 3 The plans to deliver an airtight and watertight building were not delivered and as at December 2009 the building remained incomplete. There is now agreement between the main stakeholders to ensure that the project is completed. New project managers have been appointed and additional funding has been made available by the Arts Council and Essex County Council to complete the project. Currently progress against targets to make the building airtight and watertight by May 2010 is on track.

# Scope and objectives

- 4 The review has considered progress on the project, its current funding position, in particular the ongoing commitment of partners to the funding arrangements, and arrangements for alternative sources of funding if current arrangements fail. It also considers the robustness of future plans to ensure that Visual Arts Facility is completed and is fit for purpose.
- 5 We have evaluated progress against the recommendations of a previous review of the visual arts facility published by the Audit Commission in April 2009. Specifically that:
  - there is sufficient capacity to act as an intelligent client in the final phase of the project;
  - there are robust costed plans for completion which are SMART and established on robust, enforceable and costed basis;
  - risks and plans for their mitigation are sufficiently detailed and are monitored in an open and transparent manner;
  - progress with the delivery of the plans against allocated budgets is monitored in an open and timely manner; and
  - improvements to communication lead to the sharing of consistent and accurate information about the project both internally and externally.

# Audit approach

6 The work started in December 2009 and was completed in March 2010.

7 Document reviews included:

- internal reports and communications, including reports to the Executive, risk assessments and Cabinet minutes; and
- external reports and communications, including VAF funder's group minutes and reports to the external funding organisations.

8 Interviews included:

- councillors and senior officers of Colchester Borough Council; and
- representatives of the main funding agencies.

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# Conclusions

## Summary Conclusion

- 9 There is increasing confidence amongst the funding partners and the Council that the first phase of the VAF project will be completed in the revised timescales and budget. Project management has improved significantly and progress against agreed plans is good. Agreements, in principle, are now in place to provide the additional resources required to complete the second and final phase of the project. Despite this some significant risks remain in relation to both ongoing cost uncertainties and the potential impact of further delays and cost reductions on the future use of the building.

## Main Conclusion

- 10 There is confidence and commitment amongst all partners that the building of the visual arts facility (VAF) will be completed by May 2011. Progress against phase 1a of the project, which is to make the building air tight and water tight, is on time and within budget. There are high levels of confidence that an airtight watertight building will be made available in July 2010. At this stage, the risks of further deterioration of the building due to the elements will have been minimised. There is a sense of confidence amongst the partners that completion of the project is now achievable. The significant financial penalties, particularly for Colchester Borough Council, and loss of reputation for all funding partners are strong drivers for completion. There is a desire from all partner organisations to support the project through to completion.
- 11 Communications around the project have been transformed. Internal communications are now good and improving and funding partners now also feel that communications are good. Partners receive regular, timely reports on project progress and risks. Within the Council there is a commitment to disseminating all but commercially sensitive information as widely as possible. The Cabinet receives regular updates from project and funder meetings. Internal communications are effectively supported by the Council's own communications team and those of partner organisations. Partners are open about the project, its progress and the challenges it faces.
- 12 Partners have identified significant improvements to project management in phase 1a 2010. Contractual arrangements are seen as robust and delivering against targets. Councillors particularly praise the openness of the contractor, for example in enabling site visits. Specialist advisors noted better management of the site including improvements to health and safety. Closer checking of compliance with design briefs and assurances of staff competence were introduced. There is tangible evidence that project management arrangements have improved.

## Conclusions

- 13** Increased capacity as *intelligent clients* has improved the management of the project, although there are some partner concerns that the Council's client team lacks independent quantity surveyor and project management skills. The VAF funders' group has extended its capacity as an intelligent client through the appointment of a completion co-ordinator. This has enabled the group to challenge more effectively and ensure they have the relevant information to support those challenges. There is a much better understanding of roles and responsibilities on the part of funders and the Council. Project director, completion co-ordinator and other technical advisors are providing good support to the Council. They give both partners and the Council more confidence that the project can and will be completed. Despite this the Council's capacity to challenge costs proposed by the contractor is limited. The understanding of project delivery has improved but the capacity of the Council to challenge its advisors must be maintained.
- 14** Some risks to 'Firstsite', caused by delays to completion, have been mitigated but others remain. The Arts Council has provided support to Firstsite ensuring that some of the external funding allocated by external bodies has been retained despite delays. It has also supported the move from temporary accommodation enabling Firstsite to establish a presence in Colchester town centre and to purchase a building which will ultimately become a facility for visiting artists. The new 'shop front' has enabled Firstsite to further raise its profile with the public. However, significant sums of money are linked to a lease for the VAF being completed and other sums have been ring fenced although risks remain that the protection of these funds could be withdrawn. Delays in the completion of the VAF have therefore not had the anticipated negative impact on external funding for Firstsite, but this continues to be a threat in the future.
- 15** Concerns that cost savings could affect the final quality of the building are being addressed but there is not a consensus on what this means in practice. Some partners were concerned that the impact of value engineering and budget reductions could reduce the quality in phase 2 completion. This in turn could detract from the future use of the building, particularly aspects of high value commercial activity. The funding body acknowledged the principle that whilst the project should look for savings this should not be at the expense of quality. Recent decisions on the release of additional funds are based on maintaining the quality of finish. However there remains a view amongst some local councillors that costs to local tax payers should be minimised and that this could include reducing the cost and quality of the final fit out. Whilst there is therefore a commitment to maintaining a high standard of completion in the final phase of the project what this means and how it will be funded is not yet clear.
- 16** Delays in completion of the first phase of the project have resulted in further deterioration and increased costs for rectification. Initial plans to make the building airtight and watertight were not delivered. The building continued to remain open to the elements and pest damage throughout 2009. This resulted in further damage to work already undertaken, such as to wall cladding. This damage is now being rectified as part of phase 1a with additional costs to the overall project. There is not yet cost certainty for final completion of the building but estimates suggest that it has risen further to between £27.5 and £28.5 million.

- 17** Despite some uncertainty over final costs, proposals to fund the final, phase 2, completion of the VAF are in place but not yet finalised. In March 2010, the funders group agreed the contract management approach to be employed for completion of the final phase of the VAF. The current external contractor will be engaged to extend the construction management approach for phase 1a into phase 2. The estimated costs of phase 2 are £7.5 million leaving a budget shortfall of £3.5 million. There is still some volatility around these costs, which continue to rise. There is an agreement in principle that this shortfall will be met by further contributions from the Arts Council (£1.5 million), Essex County Council (£1.5 million) and Colchester Borough Council will (£0.5 million by forward funding part of the bond currently subject to legal action). However, this commitment in principle remains to be ratified by these organisations following the election in May 2010. If agreed, this approach will mean that project completion is not dependent upon the outcomes of legal action, reducing risk in this area. As £4 million is already available for the completion of phase 2 work, this can commence before agreement on additional funding is finalised. The VAF project can therefore progress to its final stage although all the resources required for completion are not yet agreed.
- 18** A range of issues linked to the completion of phase 2 are as yet unresolved. A final detailed specification for the completion of phase 2 is not yet in place. Some aspects of the building have had to be redesigned such as the acoustic ceiling in the auditorium. The scope of works required is unclear and this needs to be defined, including ongoing remediation so that contractors are clear about expectations. The level of detail and specification for final designs and the level of engagement with the sub contractors in determining the final specification have not been agreed. There is some disparity in professional advisor and contractor views in this area; the latter feeling that there should be some flexibility in the final design to enable more effective working with sub contractors. Plans and specifications for the completion of the final phase still need to be developed and agreed.
- 19** Despite the positive progress with phase 1a, there remain significant risks for the Council. As part of an agreement to get additional investments from the funders in 2008, the Council accepted all risk for the final completion of the project. Funding partners have chosen not to enforce this aspect of the contract at this time but it remains a risk which needs to be mitigated. Failure of the project would mean that the Council could be required to refund external investment in the region of £12 million. The Council is responsible for ensuring external works such as landscaping are completed in the same timescales as the building. A project manager is currently being appointed to co-ordinate this work. It is anticipated that the £0.6 million required to complete the landscaping will be released from the bond subject to adjudication in April with the remainder being provided by Haven Gateway Partnership.

## Conclusions

- 20** The impact of legal action against the project's original contractors poses a significant risk for the Council. If successful, the Council intends to release the previous contractor's bond and invest it into the budget shortfall. However the outcome of legal action remains uncertain. A recent adjudication decision has gone in favour of the Council, although this has been contested by the original contractor. Litigation against the contractor will take place in November 2010. The risk of this is solely with the Council which has allocated resources to support the action. The Council's legal advisors have indicated that there is a good legal case to be made against the contractors. The Council is planning to use any resources which are released from the bond to support the project; for example to pay for landscaping. If the bond is not released this will be a further cost the Council will need to meet. There are significant financial risks associated with an unsuccessful outcome of planned legal action.
- 21** The opportunity to explore alternative and potentially more cost effective approaches to project delivery are constrained by a lack of time due to rising costs and the need to take immediate action. The Council chose to identify the new contractor from a framework contract used by Essex County Council (which complies with OJEU procurement regulations) rather than by open tender. It was concluded that the contractor's track record with Essex County Council provided support for their engagement. The new contractor advised that a construction management approach would be the best way to deliver phase 2 of the project. Despite the possibility that individual tenders for work might be cheaper, all partners agreed that the risks associated with that approach were high, particularly extended completion time, and agreed the construction management approach. Decisions made about the project are being made pragmatically but opportunities to explore alternative have been constrained.
- 22** Plans to improve external communication about the VAF are in place but impact at this stage is limited. The public are not clear about the future plans for the VAF. A group of local residents remain opposed to the project and express this opposition through the local press and other media. There is limited engagement with the general public who appear to be at best neutral about the project, although some feel it was forced upon them. External communication about the project during 2009 was limited. However in late 2009, the communications strategy was refreshed and there is now a clear communications plan to improve public awareness of the VAF and what it can offer. It is anticipated that improved communications will begin to impact on local people during the summer of 2010, in part linked to the completion of phase 1a. The potential benefits of the VAF to local people have as yet not been marketed effectively. Local people are not well informed about the VAF and its future.

**23** Decisions relating to the VAF project have been subject to public scrutiny but have not been reviewed in detail by the Council's scrutiny function since March 2009. The increasingly transparent decision making relating to the VAF project means that in the last year it has been subject to extensive public scrutiny. There has been political agreement in the Council not to use the project as 'a political football'. Decisions relating to the VAF project were primarily taken by Cabinet and subject to public scrutiny. However there was no internal scrutiny review of the project. Progress reports were received but not specifically challenged. The scrutiny function has limited capacity within the Council and other areas of risk, such as decent homes, were prioritised over the VAF project. Whilst scrutiny does review general risk registers it has not reviewed the VAF register in the last year. It is acknowledged that to scrutinise the project effectively, scrutiny would need an intelligent client function providing sufficient technical expertise to challenge decisions. Independent internal challenge to the project has been limited over the last year.

### Recommendation

**R1** The Council should ensure that:

- it has sufficient capacity to challenge all aspects of the delivery of phase 2 of the project;
- external communications and marketing relating to the VAF, and in particular its future use, are robust and inform the general public of the use and potential of the building; and
- it scrutinises the final stages of the project to ensure that it delivers value for money.

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For further information on the work of the Commission please contact:

Audit Commission, 1st Floor, Millbank Tower, Millbank, London SW1P 4HQ

Tel: 0844 798 1212 Fax: 0844 798 2945 Textphone (minicom): 0844 798 2946

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