

REPORT TITLE: HOWLEY WALK, BATLEY – APPROVAL OF INCREASED BUDGET TO ENABLE COMPLETION OF DEVELOPMENT

Housing Portfolio Holder Briefing	19 April 2024
Cabinet Member	Cllr Moses Crook Housing, Highways & Transportation
Key Decision Eligible for Call In	Yes Yes
Purpose of Report To consider the options in section 6 and consider approving an increase to the budget and appointment of a contractor to complete the Howley Walk newbuild scheme following contractor administration.	
Recommendations Option 1: <ul style="list-style-type: none"> to increase the overall scheme budget from £2.1 million to £2,460,212 and to let a JCT (2016) D&B contract to Ellison Construction Limited for the sum of £882,984.10 subject to receipt of a satisfactory value for money assessment from Michael Dyson Associates. Reasons for Recommendations Quickest option for completing the scheme and avoiding further deterioration in the condition of the properties, potential reputational damage, and increased cost. Negates the risk of an open tender exercise which results in no, or uncompetitive bids and further delays to completing the scheme. Certainty over delivery and price compared to other options with demonstration of value for money.	
Resource Implication The increased cost will be funded from the HRA Council House Build Programme budget. There is sufficient provision in this budget to cover the cost increase. The contract will continue to be managed by Michael Dyson Associates; whose fees are included in the overall budget; and existing resources within the Homes & Neighbourhoods Development Team.	
Date signed off by <u>Strategic Director</u> & name	David Shepherd 19 March 2024
Is it also signed off by the Service Director for Finance?	Isabel Brittain 26 March 2024
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Julie Muscroft 22 March 2024

Electoral wards affected: Batley East

Ward councillors consulted: Councillors Akhtar, Loonat and Zaman were consulted in 2019 when the scheme was at the design and planning stage. Councillors A. Zaman and H. Zaman are aware of the current situation with regard to the contractor insolvency.

Public or private: Public

1. Executive Summary

- 1.1 Cabinet approved the direct delivery of new council housing on 20 January 2020.
- 1.2 This project forms part of the council house build programme and will deliver 7 x 2-bedroom family homes on the Soothill Estate in Batley.
- 1.3 A Key Decision was taken on 28 May 2020 to approve the construction of new council housing on sites at Corfe Close and Howley Walk. A contract for £1,319,763 for the construction of 7 x 2-bed houses at Howley Walk was signed in March 2021. The contractor went into administration in February 2023 leaving the site part way through construction.
- 1.4 At the time of Tolent's administration, the scheme had already exceeded the original budget of £1.33m as a result of the actual cost of provisional items in the contract being higher than the sum allowed. The anticipated final account was £1.93m.
- 1.5 A decision was taken in December 2023 to increase the maximum scheme budget to £2,106,445 and to direct award a building contract not exceeding £550,000 in value to Ellison Construction to enable the project to be completed. Ellison were performing well on a council house building contract won through competitive tender and had confirmed they had capacity to undertake the work.
- 1.6 Ellison Construction's tender price was higher than the approved contract sum and therefore the decision could not be implemented.
- 1.7 The Council's cost consultants undertook a more thorough analysis of the estimated cost to complete the project and provided a revised contract estimate of £861,000.
- 1.8 Value engineering discussions have taken place with Ellison who have revised their tender price to £883,000.
- 1.9 The report gives details of the options considered and recommends approving the increased budget and the award of the building contract to Ellison Construction.
- 1.10 Portfolio Holder was briefed on 19 March and a Key Decision Notice was published on 21 March.

2. Information required to take a decision

Background

- 2.1 Ellison Construction's tender price was almost £400k higher than the estimated cost provided by the Council's cost consultant, Michael Dyson Associates Ltd. (MDA). It was therefore not possible to implement the decision taken in December 2023 to approve the increased cost envelope for the scheme, nor to let the building contract to Ellison Construction. The difference between the expected and actual tendered costs was so great, it was not feasible to enter value engineering discussions with Ellison to try to bring the scheme within budget.
- 2.2 MDA were immediately instructed to review their budget estimate and comment on the reasons why the tendered sum was so much higher than they had advised it ought to be.
- 2.3 Property Services expressed an interest in completing the project and tender documents were provided to them on 12 January. Officers from Property Services visited the site on 30 January but have not submitted a price. Property Services have limited capacity, and it is recognised that this needs to be focussed on other priorities at the current time.
- 2.4 Brief discussions were held with Procurement colleagues who advised that this is not an attractive tender opportunity and that very few framework contractors would be likely to submit a tender. They recommended that if the scheme were re-procured, it should go out to open tender.
- 2.5 MDA admitted that when preparing their original budget estimate, they had underestimated the cost of the external works and drainage, preliminaries, provisional sums, and the extent of remedial work needed in the properties that have been damaged by water ingress. They also felt that the contractor had inflated their rates slightly to cover risk but advised that this is to be expected given that this is not a "normal" contract situation. MDA advised that with the scheme being part built, it is hard to gauge an accurate tender return sum and to compare that to the previous contractor's costs for the remaining work.
- 2.6 Following their review, MDA have provided a revised estimated cost of £861,000 to finish the construction work and, in conjunction with the Council's engineering consultant have identified some areas where Ellison's prices could be scrutinised, and possible savings made. Officers will be taking steps to address the poor performance by MDA on the budget estimating element of the contract which is disappointing as performance to date has been satisfactory.
- 2.7 Officers and MDA met with Ellison to discuss their tender. Ellison have confirmed their continued interest in the project, have taken on board the queries raised regarding their pricing and have since submitted a revised tender price of £882,984, representing a saving of £47k on their original price.

Cost implications

- 2.8 Ellison's price is £22k higher than MDA's revised cost estimate. MDA have been instructed to check that the revised price includes all the adjustments discussed with them, is arithmetically correct and to provide a value for money report recommending acceptance if they believe this is a better option for the Council than re-tendering the scheme.

2.9 Accepting Ellison's revised price would take the total budget requirement for the scheme including spend to date to £2,460,212. This represents an additional spend of £354k over the budget approved in December 2023. The scheme would generate a negative Net Present Value of -939,405 assuming an affordable rent of £119.82 plus a service charge of £1 per week is charged.

2.10 If the Portfolio Holder is minded not to accept Ellison's tender price, approval will still be required to an increased budget if the development is to be completed at all. Based on MDA's revised budget estimate, the overall budget required to complete the project will be £2,437,674, an increase of £331k over the budget approved in December 2023. Based on an affordable rent, the NPV would still be negative at -£926,627

3. Implications for the Council

Working with People

3.1 The site is secured with Heras fencing which means that surrounding residents look out on a partially completed building site. In addition, part of the communal garden of the adjacent flats has had to be fenced off for safety reasons due to deep excavations on site. This detracts from the quality of the neighbourhood, impacts on residents' amenity space and officers have received negative feedback about the state of the site from residents. It is therefore important to the local community that the new homes are completed as soon as possible not only to improve the environment, but to provide much needed family housing in the area.

Working with Partners

3.2 There will be no impact beyond that set out in the original Key Decision.

Place Based Working

3.3 There will be no impact beyond that set out in the original Key Decision.

Climate Change and Air Quality

3.4 The homes have been constructed to the standards agreed when the scheme was originally approved. As such, they will not meet the latest standards in terms of thermal efficiency but will still have a high level of thermal efficiency relative to most council homes.

Improving outcomes for children

3.5 Evidence shows that poor quality housing is detrimental to children's health and educational attainment so the provision of quality, well-insulated affordable family housing with private gardens will contribute towards improving outcomes for children.

Financial Implications

3.6 The financial implications of the project are set out above. The estate road will not be adopted, and Homes & Neighbourhoods will be responsible for its upkeep. A small service charge will therefore be required from residents of these homes to cover regular maintenance and upkeep as well as repairs and resurfacing in the future.

Some of the costs that will be incurred to complete the project have been incurred as a direct result of Tolent Living going into administration, for example additional fees and surveys. The Council holds a small retention that will offset the impact of some of these costs and officers will submit a claim to the administrators for the remainder when the full costs are known.

There is capacity within the HRA Business Plan to accommodate the additional spend in 2024/25.

Legal Implications

- 3.7 A building contract will need to be entered into with Ellison Construction Limited. Legal colleagues have been advised and are in the process of assigning a Legal Officer to prepare the documentation.

Other (e.g. Risk, Integrated Impact Assessment or Human Resources)

- 3.8 There are no other implications associated with this proposal.

An Integrated Impact Assessment has not been completed as this proposal does not introduce any changes from the scheme that was approved in 2020.

4 Consultation

- 4.1 Consultation was carried out with residents and members prior to the original scheme being approved in 2020. No further consultation has been undertaken as proposals have not changed.

5 Engagement

- 5.1 Officers have kept the Secretary of the Tenants & Residents Association informed of progress regarding completion of the building work and have responded to issues as they are raised. Officers met with the Chair and Secretary of the Tenants & Residents Association in July 2023 to explain why the construction work had not yet been completed. Following this meeting a letter was sent to members, residents in Howley Walk and those adjacent to the site to reassure them that the Council did not intend to abandon the development. A further email update was provided to the Chair and Secretary on 11 March.

6 Options Considered

Option 1 (Recommended)

- 6.1 Approve the increased budget of £2,460,212 and award Ellison Construction a contract for £882,984.10 following the expiry of the delegated decision-making period and subject to receiving a satisfactory value for money report from MDA.

Option 2

- 6.2 Approve an increased budget of £2,437,674 including the letting of a JCT 2016 D&B contract to a contractor yet to be procured through open tender.

Option 3

- 6.3 Allow Property Services more time to submit a price then award the contract based on the lower of the two prices received to date.

7 Reasons for recommended Option

- 7.1 Option 1 is the fastest route to getting the scheme back on site and the outstanding work completed. Whilst the Council cannot be certain that it has obtained the best price for the work, as the price has not been subject to market competition, the tender sum is within £22k of the consultant's cost estimate. This project is not an attractive option for a contractor and the fact that Ellison have shown an appetite for the work, and are willing to be transparent, proactive, and cooperative to get the job done should not be underestimated. On balance, it is felt that the additional cost of £22k over the potential budget requirement for Option 2 is outweighed by the certainty that Option 1 gives over cost and delivery. Option 1 is therefore recommended.

- 7.2 Procurement have recommended open tender rather than a framework because it is not an attractive opportunity for a contractor to take on a part-completed project. Because there are a limited number of contractors on a framework, the risk of a nil tender return is greater. Ellison are not on an existing Council framework but could be invited to submit a tender if an open process is followed, and a competitive situation may eliminate some of the risk in their current price. Ellison were invited to submit a tender for Howley Walk last year on the back of their performance on another council house building contract in Liversedge. Ellison top scored on quality in a competitive open tender process and achieved the highest overall tender score. They continue to perform well on the scheme and officers have developed a good working relationship with key personnel.
- 7.3 Ellison were hoping to start on site as soon as their current contract at Sixth Avenue is complete (expected at the end of April). If Option 2 were selected, the additional time it would take to complete a competitive tender process is likely to mean that there is a gap between Sixth Avenue completing and the Howley Walk contract being awarded. There is a risk that Ellison may choose not to submit another tender, or that they submit an increased tender price to account for inflation over the last quarter. Option 2 is likely to add a further month to the timescale for start on site and to allow sufficient time for bidders to price. It will also involve more staff time in arranging to open up the site for potential bidders to inspect the work completed to date. Should the lowest tender exceed the approved budget, the KDN process will have to be restarted, causing further delay. Option 2 is therefore not recommended.
- 7.4 Property Services were sent tender documents on 12 January and are due to visit site again on 15 March but have so far not provided a price. Property Services have limited capacity which needs to focus on a larger capital programme, improving repairs performance and fire safety doors in the immediate future. For this reason, Option 3 is not recommended.

8 Next steps and timelines

- 8.1 As the level of expenditure means that this will be a Key Decision, Executive Governance have confirmed that the Portfolio Holder needs to approve the decision. If the Portfolio Holder supports Option 1, the timescale to complete the project will be as follows:
- Decision Date – 19 April
 - Issue Delegated Decision by Cabinet Member notice – 23 April
 - Confirmation of award of contract – 24 April
 - Start on site – 20 May
 - Completion – 20 October
- 8.2 Officers will brief the Chair and Secretary of the Tenants & Residents Association when key milestones in the timeline above have been achieved and will ensure that the contractor does a letter drop to local residents to introduce the site team and provide first point of contact information prior to starting on site.

9 Background Papers and History of Decisions

Key Decision – 20 January 2020

Mixed Tenure Council House Building: Direct Delivery/Bridge Homes Joint Venture
Decision Maker: Cabinet

Key Decision – 28 May 2020

Develop single tenure council housing on the following sites: Corfe Close and Howley Walk

Decision Maker: Strategic Director for Economy and Infrastructure

Key Decision – 20 December 2023

To update Key Decision taken in May 2020

Decision Maker: Strategic Director Growth and Regeneration

[Howley Walk - approval to update KD taken in May 2020.pdf \(kirklees.gov.uk\)](#)

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