

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 25 October 2022	<b>Meeting Name:</b> Strategic Director of Housing and Modernisation
<b>Report title:</b>		<b>Gateway 3 – Cost Variation Decision</b> Daniels Road	
<b>Ward(s) or groups affected:</b>		Nunhead & Queens Road	
<b>From:</b>		Managing Director of Southwark Construction	

## RECOMMENDATION(S)

That the Strategic Director of Housing and Modernisation:

1. Approves the variation to Daniel's Road, construction contract with Geoffrey Osborne's Limited (Osborne).
2. Notes a drawn down from the contingency budget to cover inflation costs applied between Gateway (GW) 2 approval (March 2018) and contract award (August 2019).
3. Notes a further call down of the rest of the contingency, reducing the variation to the contract sum.
4. Notes the decrease of on-costs associated with the contract. On-costs include a number of commitments made to local residents including repairs and improvements to existing communal structures and neighbouring homes affected by the new development.
5. Notes the unspent on-costs approved at GW2 are utilised to partially resource the increase of works costs.

## BACKGROUND INFORMATION

6. This report seeks approval of a variation to the build contract between Osborne and the council, awarded in August 2019 for the construction of new build units at Daniel's Road; providing 14 flats and five terraced houses for council rent.
7. Contract sum was approved in August 2019, with remaining contingency costs and on-costs approved at GW2 in March 2018,
8. As noted in paragraph 1 approval is being sought to pay the additional construction costs incurred in the project.

## **KEY ISSUES FOR CONSIDERATION**

### **Key Aspects of Proposed Variation**

9. The variations on top of the initial contract sum and contingency at GW2 approved in March 2018 include employer's agent instructions, Loss & Expense re Extension of Time, a goodwill payment for Covid-19 and Liquidated and Ascertained Damages.

### **Reasons for Variation**

10. After the project was tendered (September 2017) and the GW2 report approved (March 2018) it took 17 months to get the contract signed (August 2019). During the time of negotiations with the contractor inflationary costs had increased for which the council were obligated to pay in line with an agreed BCIS uplift at 3.82%.
11. A total of 27 Employer's Agent (EA) instructions have been issued since the construction works started in October 2019. These include variations to the scope of works and changes in the provisional sums.
12. Variations to the scope of works include removal of asbestos, change in insulation to masonry build up and cladding areas, arboricultural works, treatment of Japanese Knotweed and external lighting change, among others.
13. There have also been changes with cost implication associated with the provisional sums, including: water connection fee, application fee for S185 License, SGN gas connection, electric connection fees (UKPN), details of drainage requirements, reinstatement of pavement (S278 works), replacement of trees, and temporary propping of retaining walls.
14. An extension of time claim for 62 days has been agreed with the contractor and an associated Loss and Expense claim as well as a goodwill payment to compensate for the impact of Covid-19 during the construction process.
15. A further four extension of time requests have been made, though never formally issued, by the contractor. However, a goodwill reduction in liquidated damages in lieu of further Loss & Expense claims has been proposed to the contractor as part of the final account agreement.

### **Lessons Learned**

16. Post tender, and during the contract phase the tender sum has increased by 6.9%. Lessons learned for the council embarking on future construction works of new homes are to consider a higher level of contingency. Also, to conduct additional surveys pre-contract to capture and cost as much

information on the land and existing structures as possible prior to agreeing the contract sum.

17. The Covid-19 pandemic has caused a significant delay in the construction works, and this extension of time has meant an increase in the construction costs. In these uncertain times of climate change, political turbulence and increased public health threats, greater amounts of contingency should be made available in construction projects.

**Future Proposals for this Service**

18. No future proposals recommended for this service.

**Alternative Options Considered**

19. The council had already entered into contract with Osborne when the Covid-19 hit and the Government imposed the first national lockdown. As Covid-19 was a Force Majeure event no alternative options were considered when the project started to suffer delays due to a lower construction output.

20. The only option that could have been considered is to not agree certain variations to the scope of works. For example, it could have been agreed not to proceed with the boundary treatment (including a number of retaining walls along the rear elevation of Block B). This item was included as a Preliminary Provisional Sum in the contract because the work had not defined at tender stage. This option would have meant that in the future neighbouring properties could be structurally affected, and potentially cost more by bringing another contractor to do this job. Therefore, it would seem reasonable to future proof the build as part of this works contract.

**Identified risks for the Variation**

RISK		RISK LEVEL	MITIGATION ACTION
1.	Project delivery delays (general)	Medium	Liquidated Ascertained Damages sums have been included as part of the contract and will be claimable should the project further overrun without any justification. Any extension of times will be fully scrutinised, justified and costed by the EA prior to agreement. Project progress will be monitored and slow progress will be addressed in the monthly project meetings.
2.	Covid -19 Implications	Low	Sharpe Pritchard Solicitors for the new homes team have provided advice on wording regarding Covid19 clauses to be

			added to the contract and financial assistance we can offer to contractors.
3.	Further Cost Implications	Low	The EA has presented current cost estimates. As the contractor is still in the process of completing the scheme there could potentially be further cost fluctuation with omissions and additions to the contract sum. As the build is near completion, the risk of any major fluctuations is now reduced. Cost savings will continue to be sought to mitigate cost over-runs.

### **Policy framework implications**

21. The development of these 19 new homes aligns with the council's principles and visions for a new housing strategy, which is aimed at increasing the availability, affordability and quality of homes in the borough. The new homes will play a key role in assisting the council to achieve its target of building 11,000 new homes by 2043.

### **Contract management and monitoring**

22. The council's contract register publishes the details of all contracts over £5,000 in value to meet the obligations of the Local Government Transparency Code. The Report Author must ensure that all appropriate details of this procurement are added to the contract register via the eProcurement System.

23. The management and administration of the build contract and the completion of the project have been project managed through the Southwark Construction.

24. The contractor's performance has been monitored and managed by the EA, RLF for the duration of the project. A Clerk of Works, Calford Seaden, has inspected progress on site once a week and provided written reports on a weekly basis highlighting the quality of the contractors workmanship, flagging any health and safety issues and monitoring progress against programme. The Project Manager for this scheme has monitored RLF's performance on a monthly basis using Key Performance Indicators which have also been reviewed by the Strategic Lead. Annual performance reviews have also been undertaken in accordance with contract standing orders.

## **Community, equalities (including socio-economic) and health impacts**

25. The provision of 19 new homes provides a positive impact on health inequalities, as the scheme is designed to current quality and space standards that will contribute towards addressing health inequalities. As 100% of the new homes will be allocated to existing residents/those in housing need in the borough, residents who are living in overcrowded conditions, or unsuitable housing will benefit. In addition to this, rent levels are set at council rent, that are lower than London Affordable rent levels and market rent levels making them genuinely affordable. Health and wellbeing of residents is gained by conversion of a former garages site to provide quality self-contained flats and houses. The development does not impact on existing green space.
26. The proposals to increase the supply of affordable, good quality homes will benefit households in need from all Southwark communities, and will increase the housing options available for older people and people with disabilities, where it is possible working with the constraints of existing period properties.

### **Community impact statement**

27. The 2020 Route to 11,000 Housing Strategy for Southwark, highlights an acute shortage of council housing and a continuing need for affordable housing. 20,000 residents are currently on the council's waiting list; and there are 52,597 homes in management. The borough is experiencing very high house prices that are outside the reach of many of its residents. It has the highest house prices in the housing sub-region. The average property price in the borough is £654,779 which is an increase of 3.9% in the last year. This compares with the average London property price of £603,855 which is a change of 1.4% in the last year. The rental market in the borough is also experiencing high rent levels with average lower quartile rent for a two bed in excess of £2,000 per month. The average income per house hold is £31,000, making ownership and rental options out of reach.
28. At the time of the 2011 census there were 18,547 overcrowded households in Southwark, a higher number, and a higher percentage (15.3%), than any of the other four boroughs in the sub-region. Over the period 1981- 2012 the population of Southwark increased by 34%, the fastest growth in the sub-region by some margin. This helps to demonstrate a continuing need for more homes and particularly for affordable homes in the borough.
29. Cabinet agreed a new vision for Southwark through its 2013 to 2043 housing strategy which included a principle to use every tool at our disposal to increase the supply of all kinds of homes across Southwark.
30. The proposals to increase the supply of affordable, good quality homes will benefit households in need from all Southwark communities, and will increase the housing options available for older people and people with disabilities.

31. Those households in the vicinity of the new developments may experience inconvenience and disruption in the short term, whilst works are taking place but such communities will benefit in the longer term from the provision of new homes. Particularly as 50% of these homes will be let to existing tenants from the local area subject to the agreed local lettings policy.

32. As the project is the construction of new properties, not located on an estate, consultation in line with the charter of principles agreed by cabinet in November 2014, will not apply. We have however, ensured that any residents affected by works continued to receive regular written updates from the contractor.

### **Climate change implications**

33. The development will comply with Building Regulations Part L that addresses the conservation of fuel and power, and guarantees eco-friendly efficient properties and minimise carbon emissions, as part of a drive towards a greener future.

### **Social Value considerations**

34. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the wellbeing of the local area can be secured. The social value considerations included in the tender (as outlined in the GW1 report) are set out in the following paragraphs in relation to the tender responses, evaluation and commitments to be delivered under the proposed contract.

35. The council's approach to procurement of design, development and construction process has ensured a requirement to maintain and improve the sustainability of the project.

36. A low energy, efficient and cost effective building engineering services design that keeps running costs to a minimum was an essential component of the project brief. Key considerations included:

- Consideration of whole life-cycle costs.
- Sustainable sourcing.
- Incorporation of environmentally benign heating and lighting provision.
- Provision of facilities and equipment to encourage the re-use and recycling of materials including, where practical, water recycling.
- Ensuring projects achieve Code of Sustainable Homes criteria or any successor requirement.

37. The contractor have participated in a local employment and training initiative in line with Southwark Economic Wellbeing Strategy 2012-20. The initiative conforms to any local government policy including requirements set-out by the Homes and Community Agency and/or Greater London Authority that

encompasses the contractor being encouraged to employ local subcontractors and labour and involves the training and employment of local people. Such employment and training has been relevant to the needs of the local community.

### **Economic considerations**

38. The design brief for the new homes was developed in consultation with the 'user client' officers and made it clear that the council was seeking developments that are not only attractive and functional in their design but also durable and easy to maintain with low running costs.
39. The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that contractors engaged by the council to provide works or services within Southwark pay their staff at a minimum rate equivalent to the LLW rate. The 11,000 new homes programme is a strategically important undertaking for the council and its benefits are expected to be realised in a number of ways, including the recruitment of qualified staff, retention of staff and an improved service delivery to the council. Osborne confirmed as part of their tender return that they pay their directly employed staff and subcontractors the LLW and have processes in place to monitor this.
40. Following award, quality improvements and costs implications linked to the payment of LLW have been monitored as part of the contract review process.

### **Social considerations**

41. The new housing provides high quality affordable housing for local people in need of accommodation. 50% of these homes will be made available to existing tenants in the local area based on the agreed local lettings policy. The remainder will be made available to other households in need of accommodation from the council's housing register.
42. The new rented homes will be let at council rent levels.
43. The contractor has worked with the council approved local employment and skills agencies to recruit borough residents into construction industry apprenticeships. The requirement outlined in the tender documents was to meet the Fairer Future criteria of 1 apprenticeship per £1m of spend; which resulted in one placement on this project.

### **Environmental/Sustainability considerations**

44. By investing in high quality, well designed buildings and estates the council aim to achieve positive impacts which will benefit the environment and increase the stock of environmentally friendly buildings within the borough.

45. As part of the design development process, there was be a requirement for environmental assessments to be completed, with a view to identifying what impact would be caused by the proposed development.

### **Financial Implications**

46. The total value of the contract, including the variations, is 6.9% more than the contract sum approved at GW2. With revised on-costs, this results in a revised total scheme cost 3.45% higher than the approved project budget. The variation in the contract sum will be partially resourced from both the remaining contingency and the on-costs budgets. The costs will be funded from resources identified for the project which includes borrowing.

### **Investment Implications (Housing Contracts only)**

47. Not applicable.

### **Legal Implications**

48. Please see the comments from the Director of Law and Governance

### **Consultation**

49. Consultation with residents or a tenant's panel for this variation is not required.

50. The contractor currently keeps neighbouring street properties updated on the project construction by sending newsletters on a quarterly basis.

### **Other implications or issues**

51. No other implications or issues.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Finance and Governance (H&M22/064)**

52. The report seeks approval from the Strategic Director of Housing and Modernisation for the variation of the contract amount for Daniel's Road, construction with Geoffrey Osborne's Limited (Osborne). It is noted that the contract varied by 6.9% to the approved GW2 report. The approved contingency (which also covered the approved inflationary uplift at contract award) resulted in this reduced required approval amount.

53. It is also noted that there has been savings on the on costs approved resulting. The financial implications section details how these costs are to be funded.



## **Head of Procurement**

54. This report seeks approval from the Strategic Director of Housing and Modernisation to vary construction contract for Daniels Road with Geoffrey Osborne's Limited (Osborne).

55. The Strategic Director of Housing and Modernisation notes the reasons for the variation are detailed in paragraphs 11 to 15, risks are detailed in paragraph 20, management and monitoring of the contract is detailed in paragraphs 22 to 24, the impact on equalities is detailed in paragraphs 25 to 32, paragraphs 40 and 41 confirm payment of the LLW, there are no social commitments as part of this variation.

## **Director of Law and Governance**

56. This report seeks the approval of the Strategic Director of Housing and Modernisation to the variation of the contract sum for the construction contract for Daniels Road as further detailed in paragraphs 1-5. At this value, approval can be given by the relevant chief officer, or under their delegated authority in line with the department's scheme of management.

57. The contract with Geoffrey Osborne was subject to and awarded in accordance with the Public Contract Regulations 2015 (PCR15), and it is therefore necessary to ensure that any additional sums to be made under the contract are permitted within those procurement regulations. Regulation 72 of the PCR15 permits modifications to be made to contracts in certain circumstances, including where the modification has been provided for in the initial procurement documents or where the modification is not substantial. Paragraphs 10-15 note the reasons for these additional sums, which include variations to the scope of works and agreed changes to the provisional sums. They are therefore amounts that can be made under the terms of the contract.

58. Contract standing order 2.3 requires that the expenditure should be identified before the variation is implemented. Paragraph 46 confirm the financial implications in relation to this approval.

## **Director of Exchequer (for housing contracts only)**

59. Not applicable.

## **Director of Education (for schools contracts only)**

60. Not applicable.

**PART A – TO BE COMPLETED FOR ALL DELEGATED DECISIONS**

Under the powers delegated to me in accordance with the council’s Contract Standing Orders, I authorise action in accordance with the recommendation(s) contained in the above report (and as otherwise recorded in Part B below).

**Signature**.....Michael Scorer

**Date**....24 October 2022

**Designation**...Strategic Director of Housing and Modernisation

**PART B – TO BE COMPLETED BY THE DECISION TAKER FOR:**

- 1) All key decisions taken by officers
- 2) Any non-key decisions that are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available (see ‘FOR DELEGATED DECISIONS’ section of the guidance).

<b>1. DECISION(S)</b>
As set out in the recommendations of the report.

<b>2. REASONS FOR DECISION</b>
As set out in the report.

<b>3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION</b>
Not Applicable

<b>4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION *</b>
Not Applicable

\* Contract standing order 6.6.1 states that for contract Variations with an Estimated Contract Value of £100,000 or more, the lead contract officer (LCO) must consult with the relevant cabinet member before the decision is implemented.

**5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST**

*If a decision taker or cabinet member is unsure as to whether there is a conflict of interest they should contact the legal governance team for advice.*

None

**6. DECLARATION ON CONFLICTS OF INTERESTS**

**I declare that I was informed of no conflicts of interests.\***

**or**

~~**I declare that I was informed of the conflicts of interests set out in Part B4.\***~~

(\* - Please delete as appropriate)

**7. CONSIDERATION GIVEN TO WHETHER, AS A NON-KEY DECISION, THIS SHOULD BE FORWARDED TO THE CONSTITUTIONAL TEAM FOR PUBLICATION IN ACCORDANCE WITH REGULATION 13(4)\***

*The decision taker should consider whether although a non-key decision, the decision is sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available. Where there is any doubt, having considered the importance and/or sensitivity of a decision, it should be deemed that Regulation 13(4) would apply.*

**I consider that the decision be made available for publication under Regulation 13(4).\***

**or**

~~**I do not consider that the decision be made available for publication under Regulation 13(4).\***~~

(\* - Please delete as appropriate)

\* Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the council is required to put in place a scheme for recording and publishing some officer executive decisions. This process is sometimes referred to as "Regulation 13(4)".

## BACKGROUND PAPERS

Background Papers	Held At	Contact
Gateway 2 - Contract Award Construction of new build units at Daniels Road	Southwark Construction, 160 Tooley Street	Lorraine Roach

## APPENDICES

No	Title
None	

## AUDIT TRAIL

<b>Lead Officer</b>	Stuart Davis – Director of New Homes	
<b>Report Author</b>	Jorge Roman – Project Officer	
<b>Version</b>	Final	
<b>Dated</b>	30 September 2022	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Finance and Governance	Yes	No
Head of Procurement	Yes	No
Director of Law and Governance	Yes	No
Director of Exchequer (for housing contracts only)	No	No
Cabinet Member	No	No
<b>Contract Review Boards</b>		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	No	No
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>		24 October 2022

