

Item No.	Classification: Open	Date: 10 May 2023	Decision Maker Cabinet Member for Council Homes Homelessness
Report title:		Gateway 3 – Variation Decision Aylesbury First Development Site (FDS) A	
Ward(s) or groups affected:		Faraday	
From:		Managing Director, Southwark Construction	

RECOMMENDATION(S)

1. That the Cabinet Member for Council Homes and Homelessness gives approval of £2,256,989 to allow the final account for First Development Site (FDS) A with Hill Partnership Limited to be agreed and payments to be made as set out in paragraphs 42-45.
2. That the Cabinet Member for Council Homes and Homelessness notes that this paper brings in line all previous approvals for FDS A between 2020 and 2023.
3. That the Cabinet Member for Council Homes and Homelessness notes that an increased total scheme cost of £95,476,285 was approved in the cabinet paper of January 2023.
4. That the Cabinet Member for Council Homes and Homelessness notes the total scheme cost of £ 97,732,474, now that the estimated final account has been negotiated and agreed.
5. That the Cabinet Member for Council Homes and Homelessness notes that approval for incremental increases has taken place during the course of the project.
6. That the Cabinet Member for Council Homes and Homelessness notes the revised anticipated contract completion date of July 2023.

BACKGROUND INFORMATION

7. The Aylesbury Estate regeneration programme comprises of the phased demolition and redevelopment of the Aylesbury Estate to deliver new high-quality, mixed tenure housing, which has been a strategic priority for the council. 'Early' schemes have already delivered 261 new homes at Site 1a and 147 new homes at Site 7, under standalone arrangements with L&Q. A strategic Development Partnership Agreement was entered into in 2014 with Notting Hill Housing Trust (now Notting Hill Genesis (NHG)) for the phased redevelopment of the remainder of the estate. Detailed planning consent for the FDS and outline planning consent for the masterplan for the remainder of the estate was granted in 2015. Demolition work on the FDS commenced in

2016 on the blocks that were vacant at that time with the remaining blocks added into the contract as they became vacant.

8. This report seeks approval to an increase to the works contract sum with Hill Partnership Ltd novated on 31 March 2021, from the contract between NHG for the construction 229 homes at Aylesbury FDS A.
9. A strategic Development Partnership Agreement (DPA) was entered into in 2014 with Notting Hill Housing Trust for the phased redevelopment of the remainder of the Aylesbury Estate. Under a revised delivery arrangements the construction contract for the FDS A was novated to the council and the scheme delivery to be managed by the council.
10. In July 2020 construction works for FDS contracts A and B were sought and approval received. FDS A was allocated a total scheme cost of £83,298,984 in January 2021. This report related to the variation for FDS A only.
11. Table 1: FDS Allocation of costs from July 2020 and January 2021
12. The build contract between NHG and Hills Partnership Limited was novated to the council in March 2021 and subsequently varied by those parties.
13. The council were obliged to enter into a wayleave agreement with UK Power Networks (UKPN) and London & Quadrant prior to March 2021 to ensure there were no delays to the works programme. This did not take place and was raised as a matter of urgency with Southwark Construction by NHG in May 2021.
14. Protracted delays and negotiations with London & Quadrant and UKPN prevented the agreement from being entered into until May 2022 and as a direct consequence of a year-long delay, the FDS A project is now subject to a loss and expense claim as submitted by the contractor. This is inclusive of claims submitted to the contractor by their sub consultants and is identified in paragraph 21 & 22. This is a legitimate cost payable by the council. The full extent of these historic costs are now being applied to the contract and are being addressed as part of this report. The contractor issued an early warning notice of the variation which was used to estimate the additional funds required in January 2023. Since this time there has been extensive negotiations between our Employers Agent Arcadis, the contractor Hill and the council. Evidence for contract prolongation has been reviewed and verified. This was agreed in March 2023 hence the difference from the estimated costs in January 2023 against the actual agreed.
15. The council undertook a range of extensive negotiations with internal and external parties to conclude the agreement.
16. With the lease agreement in place, mobilisation activities were required to re-start works on site. Post signing of the lease agreement, the works contract was then subject to the following:

- Confirmation from Hills Partnership Ltd of when an order would be placed
- 16 week lead in from lease agreement being signed
- Three weeks delay to site by UKPN post confirmation of start on site date

17. In March 2021 the on-site delivery of FDS A and FDS B transferred to the New Homes Development Team (Southwark Construction) for day to day management and the budgets for the combined schemes were separated. This provided an opportunity for improved financial monitoring and oversight of cost variations for FDS A.

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

18. FDS A is approaching the revised scheme completion date of July 2023 and forecast final account for the project inclusive of loss and expense claims have been reviewed and concluded by the council's cost consultants. The cost consultants anticipated final account sum has been taken account of within this paper. Any increase in costs beyond this will be accounted for from the contingency allowance for which approval is being sought.

19. To support the creation of a Low-Traffic Neighbourhood (LTN) the council's Highway's Department proposes to introduce a traffic filtering option on Westmoreland Road and the newly created East – West Street.

20. This was not included within the original scheme design but is in line with the council's desire to improve the environment for future residents. These additional works have been requested by the council's Highways Department. Although a variation, it will not form part of the contractor's works contract and will be quantified as an on-cost as part of this approval.

Reasons for Variation

21. The reasons for the variations are summarised below:

- Changes to Part B of the Building Regulations
- Contractor Prolongation costs for delayed UKPN agreement
- Works instructions
- Highways Department specification requirements including the creation of a LTN, additional s278 works relating to lamp columns and additional paving.

22. The works instructions relate to various contract variations which were authorised through a change management process within Southwark Construction. These changes are not untypical given the size and complexity of the scheme and would ordinarily be covered by a contingency amount.

Future Proposals for this Service

23. There are no future proposals recommended for this service, however recommendation for the other futures phases includes lessons learned; lack of project contingency for unforeseen items, changes in legislation, (Part B of the Building Regulations building control and heating), and council specification requirements particularly in relation to mechanical and electrical (M&E) components.

Alternative Options Considered

24. One option considered and discounted was the reduction in the specification of the scheme which could have a number of implications relating to the planning consent, design intent and a reduction in the quality and specification included in the contract.

25. The new homes are targeted primarily at the tenants on active regeneration phases within the Aylesbury Estate so any amendments to the specification could be detrimental to the council's existing obligations and reputation with residents.

26. The council should address affordability concerns for council tenants when delivering a large quantity of four and five bedroom homes for social rent. An opportunity exists on the future phases regeneration to amend the tenure mix to include some self-funding homes for sale and/or part ownership.

Identified risks for the Variation

27. Table 4:

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 overrun without any justification. Any extension of time will be fully scrutinised, justified and costed by the Employers Agent prior to agreement. Project progress will be monitored and slow progress will be addressed in the monthly project meetings.

2.	Further Cost Implications	Medium	The Employers Agents have presented the anticipated final account and the costs of which have been included within this variation.
3.	Contractor claim for Loss and Expense	Medium	The contractor's loss and expenses have been factored into the anticipated final account. Further increases are being monitored closely by the Employer's Agent but additional costs could still present a risk to the financial standing of the project.

Policy framework implications

28. The development of these 229 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 more new homes.

Contract management and monitoring

29. 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.

30. Annual performance review will be presented in line with the council's contract standing orders

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

Community impact statement

31. The community impacts of the revised delivery arrangements were set out in the original reports to cabinet. There are no further policy implications resulting from this delegated report.

Equalities (including socio-economic) impact statement

32. When considering the recommendations in this report, the council must have due regard to the continuing public sector equality duty contained within section 149 of the Equality Act 2010. That is:

- The need to eliminate discrimination, harassment, victimisation or other prohibited conduct;

- Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not and foster good relations between those who share a relevant characteristic and those that do not share it.
- The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

Health impact statement

33. The recommendations set out in this report will have a positive impact on the Aylesbury community by giving existing secure tenants the opportunity to opt to move to a council home within their neighbourhood.
34. Health and wellbeing are further addressed by providing a community centre, the creation of a new park along with private balconies and/or private gardens for residents

Climate change implications

35. 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.
36. The homes in FDS A will be connected to a new energy centre created to provide a gas supply to FDS A&B. This will exceed the council and the Greater London Authority (GLA) policy requirements in its 80% carbon emission savings over Part L Building Regulations.

Social Value considerations

37. 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 well-being of the local area can be secured. As part of their contract Hill Partnership Limited's continued commitment to provide social value initiatives includes some of the following:
- Appointment of apprenticeships and supporting skills development;
 - Providing additional opportunities for individuals or groups facing greater social or economic barriers;
 - Recruitment of locally engaged labour;
 - Recruitment of Young People Not in Education, Employment or Training (NEET) labour;
 - Recruitment of local Supply Chain partners;
 - Procurement and sourcing of sustainable works, supplies and services;
 - Community engagement.

Economic considerations

38. The council is an officially accredited London Living Wage (LLW) Employer and part of the FDS A contract the council is committed to ensuring that Hills Partnership Limited provide works or services within Southwark by paying their staff at a minimum rate equivalent to the LLW rate.

Social considerations

39. The new housing will provide high quality affordable housing for local people in need of accommodation. In line with the Local Lettings plan the FDS is earmarked for existing and defined former local tenants of the Aylesbury Estate, so these homes will be made available to existing tenants within the local area.

40. The contractor is obliged to work with the council's approved local employment and skills agencies to recruit borough residents into construction industry apprenticeships.

Environmental/Sustainability considerations

41. 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.

Financial Implications

42. The revised total scheme costs of £97,732,474 exceed the budget provision of £95,476,285 for this project. This reports seeks approval for an additional £2,256,189 to enable the project to proceed to completion.

43. The wayleave agreement was not entered into by the council until May 2022. As a direct consequence of this the scheme is in significant delay. FDS A is however approaching the final stages of the project and forecast final account has been finalised with the contractor now that the negotiations have been agreed. The anticipated final account inclusive of this delay is reflected in this report.

44. This results in a revised total scheme cost of £97,732,474 inclusive of contingency, which will be met from resources supporting the council's Housing Investment Programme.

45. The costs for Aylesbury package FDS B are excluded from this report.

Investment Implications (Housing Contracts only)

46. Hill Partnership Ltd have provided a performance bond at 10% performance of the contract sum. 5% retention will be held on the contract sum with 50%

released upon practical completion with remaining 50% will be released at the end of the 12 months defects liability period.

47. Liquidated and ascertained damages will be applied to cover loss or council's costs in the event of late completion. The contractor is required to provide insolvency insurance cover amongst other insurances required for a construction contract.

Legal Implications

48. As detailed in the concurrent of the Assistant Chief Executive – Governance and Assurance.

Consultation

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

Other implications or issues

50. None

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (HM23_005)

51. This report seeks approval from the Cabinet Member for Council Homes and Homelessness to vary the Aylesbury FDS A new homes works contract with Hill Partnerships Ltd, resulting in a revised total scheme cost £97,732,474. The reasons for the variations are noted in this report. The financial implications section details how these costs are to be funded. The revised costs exceed the latest approved budget for this project and so approval is also being sought to cover this.

52. Any further variation or extension to the contract beyond the scope of this report will require further approval in line with council's procurement protocols.

Head of Procurement

53. This report seeks approval from the Cabinet Member for Council Homes and Homelessness for an additional £2,256,189 to enable the project to proceed to completion subject to agreement by cabinet.

54. The Cabinet Member for Council Homes and Homelessness notes the reasons for the variation are detailed in paragraphs 21 to 22, the future is detailed in paragraphs 23, the risks are detailed in paragraph 27, the management and monitoring the contract is detailed in paragraphs 29 to 30, there are NO additional impacts on equalities, health or climate change and social value commitments, confirmation of the LLW is detailed in paragraph 38.

Assistant Chief Executive – Governance and Assurance

55. This report seeks the approval of the Cabinet Member for Council Homes and Homelessness for the additional sum of £2,256,989 to allow the final account to be agreed and payments to be made in relation to the contract for Aylesbury FDS A with Hills Partnership Limited. The Cabinet Member is also asked to note a number of recommendations in relation to the FDS A project as noted in paragraphs 2-6.
56. The contract for FDS A 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. Paragraph 21-22 note the reasons for these additional sums, which include variations to the scope of works and claims for delays. They are therefore amounts that can be made under the terms of the contract.
57. Contract standing order 2.3 requires that the expenditure should be identified before the variation is implemented. Paragraphs 42-45 confirm the financial implications in relation to this approval, and as noted in paragraph 1, this approval is subject to further Cabinet approval for the additional budget provision.

BACKGROUND PAPERS

Background Papers	Held At	Contact
Title of document(s) Aylesbury Regeneration Programmed: Delivery of new council homes on the First Development Site	Title of department / unit Address Housing and Modernisation Department	Name Matt Derry 07718961418
Link July 2020: https://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=7136		
Title of document(s) Aylesbury Regeneration Programme: Delivery of new council homes on the First Development Site	Title of department / unit Address Regeneration South 160 Tooley Street, London SE1 2QH	Name Matt Derry 07718961418
Link Feb 2021 report: https://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?AllId=59110		
Title of document(s) Aylesbury Regeneration Programme: Delivery of new council homes on the First Development Site	Title of department / unit Address Regeneration South 160 Tooley Street, London SE1 2QH	Name Neil Kirby
Link March 2021 report: G:\Asset Management\New Homes Delivery Team\Programme\Aylesbury Estate FDS A\1 Key Documents\20210330 Delegated FDS AB Final signed.pdf		
Policy and Resources - Capital Programme Update 2022-23 month 8	Southwark Council Finance and Governance 160 Tooley Street London SE1 2QH	Tim Jones, Departmental Finance Manager, Finance and Governance
Link January 2023 report: (Public Pack)Supplemental Agenda No. 1 Agenda Supplement for Cabinet, 17/01/2023 11:00 (southwark.gov.uk)		
Breakdown of costs appendix: G:\Asset Management\New Homes Delivery Team\Programme\Aylesbury Estate FDS A\1 Key Documents\HRA capital programme 2022-23 M08 Cabinet final v2.xlsx		

APPENDICES

No	Title
None	

AUDIT TRAIL

Lead Officer	Stuart Davis - Managing Director, Southwark Construction	
Report Author	Angela Ohen – Interim Project Manager angela.ohen@southwark.gov.uk	
Version	Final	
Dated	9 May 2023	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Director of Exchequer (for housing contracts only)	No	No
Cabinet Member	Yes	Yes
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team	10 May 2023	