

Item No.	Classification: Open	Date: 02 May 2023	Meeting Name: Strategic Director of Finance and Governance
Report title:		Gateway 3 – Variation Decision Aylesbury FDS B	
Ward(s) or groups affected:		Electoral ward Faraday	
From:		Managing Director Southwark Construction	

RECOMMENDATION(S)

1. That the Strategic Director of Finance and Governance approves the variation to Aylesbury FDS B works contract with Hill Partnerships Ltd by £2,118,326.
2. That the Strategic Director of Finance and Governance approves the revised total scheme cost inclusive of a works costs variance and the addition of a contingency sum as further detailed in the closed report.
3. That the Strategic Director of Finance and Governance notes the revised anticipated contract completion date of August 2025.

BACKGROUND INFORMATION

4. This report seeks approval of a variation to the build contract sum between the council and Hill Partnerships Ltd for the construction of 352 new homes on Aylesbury FDS B.
5. The Aylesbury Estate regeneration programme comprises of 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 for over a decade.
6. Southwark Council entered into strategic Development Partnership Agreement (DPA) in 2014 with Notting Hill Genesis (NHG) for the phased redevelopment of the remainder of the estate. Detailed planning consent for the First Development Site (FDS) and outline planning consent for the masterplan for the remainder of the estate was granted in 2015.
7. The FDS, through Package A, has commenced under the provisions of the DPA (as amended). Package A contract was let by NHG to Hill Partnerships Ltd, following a competitively tendered EU-compliant process. Package B contract has been negotiated as a JCT 2016 contract with Hill Partnerships Ltd.
8. Under the revised delivery arrangements the construction contract for FDS A has been novated to the council with NHG continuing to manage the development under the development management provisions.

9. The contract for FDS B which will deliver 352 council homes is due to be completed August 2025 is a direct appointment made between Southwark Council and Hill Partnerships Ltd.

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

10. In July 2020 construction works costs for FDS contracts A and B were sought and approval received. FDS A contract sum was approved first with the remainder of the approved costs contributing towards the contract sum for FDS B with Hill Partnerships Ltd.
11. In February 2021 additional approval was granted to increase the development costs.
12. This approval enabled the works costs for Aylesbury FDS A to be increased only. There was no change to the approved costs for FDS B.
13. In April 2021 the on-site delivery of FDS A and B transferred to the New Homes Development Team (NHDT) for day to day management.
14. The final forecast account has increased based on changes in statutory requirements requiring contract variations and the contract itself not being in line with current NHDT Employers Requirements.
15. The reasons for the variations are detailed in broad headings below:
 - Changes to Part B of the Building Regulations.
 - Changes in employers requirements to meet the council's requirements.
 - Change in lift specification.
 - Sprinkler costs.

Future Proposals for this Service

16. No future proposals are recommended for this service, however lessons learned will be applicable to other schemes; 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 M&E components.

Alternative Options Considered

17. The only alternative 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.

18. Therefore there are no alternative options that can be considered at this time. The reasons detailed in paragraph 15 are unavoidable if the contract is to be delivered in line with best practice and allow for occupation at practical completion.

Identified risks for the Variation

19. The identified risks associated with this variation request are detailed below:

	RISK	RISK LEVEL	MITIGATION ACTION
1.	Contractor risk of insolvency	Low	The New Homes Development Team will carry out quarterly credit checks to ensure the contractor financial accounts are healthy.
2.	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 times 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.
3.	Covid -19 Implications	Low	Solicitors for the new homes team have provided advice on wording regarding Covid19 which can be used to assess any Covid 19 claims from the contractor
4.	Ukraine/Russia Conflict	Low	Should the conflict between Ukraine and Russia continue for a prolonged period we are at risk of supply chain delay. To mitigate this the Employers Agent will liaise with the contractor on ways to reduce reliance on specification items that would be impacted and implement an early warning

			system to allow time for alternative procurement.
5.	Further Cost Implications	Medium	Our Employers Agents have presented the anticipated final account the cost of which have been included in this variation

Policy framework implications

20. The development of these 352 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

21. The management and administration of Hill's appointment on FDS B is the responsibility of NHG under the Development Management Agreement and the Employers Agent/Contract Administrator.

22. The council has strengthened its delivery team to include a consultant Employers Agent who will act on a time charged basis on the council's behalf to ensure the delivery of the new homes to the high quality expected and client manage any variations or amendments and ensure that the council's interest is protected until the end of the contract.

23. The contractor's performance is the responsibility of the Employers Agent and NHG. Reporting to the council is currently done via a monthly dashboard.

24. The client's Employers Agent and Clerk of Works will provide a written report on an agreed basis highlighting the quality of the contractor's workmanship, flag any health and safety issues, provide recommendations on contractual matters and variations and will monitor progress against programme.

25. The Project Manager will monitor performance on a monthly basis using Key Performance Indicators which are also reviewed by the Development Manager.

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

26. The provision of 352 new quality 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. 50% to 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 are further addressed by providing residents with individual balconies for outdoor space, along with communal landscaping.

27. 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.

Community impact statement

28. The revised delivery arrangements set out in this report would result in a significant increase in the number of homes for social rent delivered on the FDS of the Aylesbury Estate. This will in effect significantly increase the delivery of homes for social rent and provide an increase in the capacity to rehouse existing Aylesbury residents on the estate, moving residents directly into new high quality new homes.

29. The proposed prioritisation of households for lettings of new homes delivered on FDS B will be established through an approved local lettings policy.

Equalities (including socio-economic) impact statement

30. The Equality Act 2010 requires the council in the exercise of its functions to have due regard to the need to:

- Eliminate discrimination;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

31. The delivery of new homes on Aylesbury Estate will have a positive impact on the residents of the Aylesbury Estate many of whom share protected characteristics as detailed in the Equality Act 2010

Health impact statement

32. The proposal at Aylesbury FDS will have a positive impact on the health of the existing residents living on the estate as the FDS will provide the decant provision for those moving from the blocks to be demolished.

33. The homes were developed with the Aylesbury Area Action Plan at the forefront which prioritises an effective housing management solution that integrates improved public amenity and integrated facilities to improve the health and wellbeing of those on the estate.

34. Health and wellbeing are further addressed by providing a community centre, mini park space and communal roof top gardens located in the extra care facility.

35. The houses and maisonettes further benefits from private outdoor space to the rear of the units. The interconnecting roads allow easy access to Burgess Park with large green areas for the community.

Climate change implications

36. 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.

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

Social Value considerations

38. 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. The social value considerations included in the contract for social value and the provision of apprenticeships are managed by NHG on behalf of the council and are currently being fulfilled.

Economic considerations

39. The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, contractors engaged by the council to provide works or services within Southwark pay their staff at a minimum rate equivalent to the LLW rate.

40. 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. Hill Partnerships Ltd are fulfilling their social commitments as detailed in paragraph 43.

Social considerations

41. The new housing will provide 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.

42. The remainder will be made available to other households in need of accommodation from the council's housing register. However, the council is consulting with residents about a new local lettings policy, which could mean that up to 100% of new council homes are let to local residents.
43. The contractor is obliged to work with the council's 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 one apprenticeship per £1m of spend; which results in 18 placements for the whole of 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 will be a requirement for environmental assessments to be completed, with a view

Financial Implications

46. The total value of the increased works costs is £2,118,326.
47. The total variation will be funded from HRA resources supporting the Housing Investment Programme, which includes borrowing. Tables 1 and 2 in the closed report shows the original approvals and variances for the project.

Investment Implications (Housing Contracts only)

48. Hill Partnerships Ltd have provided a performance bond at 10% performance of the contract sum.
49. 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

50. Refer to concurrent from Director of Law and Governance in paragraph 56.

Consultation

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

Other implications or issues

52. The anticipated handover of the first tranche of new homes is anticipated to be November 2023 with practical completion August 2025.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (H&M 22/129)

53. This report seeks approval from the Strategic Director of Finance and Governance to vary the Aylesbury FDS B new homes works contract with Hill Partnerships Ltd by an additional from £2,118,326. The report also seeks approval for the increase on costs and contingency as set out in the closed version of this report. The reasons for the variations are noted in this report. The financial implications section details how these costs are to be funded.
54. 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

55. This report seeks approval from the Strategic Director of Finance and Governance to vary the Aylesbury FDS B new homes works contract with Hill Partnerships Ltd by £2,118,326.
56. The Strategic Director of Finance and Governance notes that the reasons for the variation are detailed in paragraphs 10 to 15, the risks are detailed in paragraph 19, management and monitoring of the contract is detailed in paragraphs 21 to 28, the impact on equalities, health climate change are detailed in paragraphs 30 to 37, confirmation of the payment of London Living Wage is detailed in paragraph 39 and social value commitments are detailed in paragraph 43.

Assistant Chief Executive – Governance and Assurance

57. This report seeks the approval of the Strategic Director of Finance and Governance to the variation of the Aylesbury FDS B contract with Hill Partnerships Limited as further detailed in paragraphs 1-3.

The award of this contract to Hill was subject to, and awarded in accordance with the Public Contract Regulations 2015 (PCR15), and it is therefore necessary to ensure that any variation of the contract is permitted within those procurement regulations. Regulation 72 permits modifications to be made to contracts during their term, in certain circumstances. This includes at Regulation 72(1)(e) where the

modification is not substantial. Having examined the circumstances noted at Regulation 72(8) which notes those modifications which are deemed substantial, it is considered that the contract can be varied under this provision. Paragraph 15 of this report gives the reasons for this variation, which are matters which can be instructed to the contractor under the JCT terms.

The Strategic Director's attention is drawn to the Public Sector Equality duty (PSED General Duty) under the Equality Act 2010, which requires public bodies to have regard, when making decisions, to the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and those who do not share it. The Strategic Director is specifically referred to the community, equalities (including socio-economic) and health impacts at paragraphs 26-38 setting out the consideration that has been given to equalities issues which should be considered when approving the recommendations in this report.

Contract Standing Order 2.3 requires that no steps are taken to vary a contract unless the expenditure has been approved. Paragraphs 46-47 confirms the financial implications relating to this variation

Director of Exchequer (for housing contracts only)

58.

Director of Education (for schools contracts only)

59.

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:  Date: 22/05/23

Designation: Clive Palfreyman, Strategic Director Finance

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).

1. DECISION(S)

As set out in the recommendations of the report.

2. REASONS FOR DECISION

As set out in the report.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION

N/A

4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION *

* 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.

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
Aylesbury Regeneration Programme: Delivery of new council homes on the First Development Site	Housing and Modernisation Department	Matt Derry 07718961418
Link: https://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?AllId=59110		
Aylesbury Regeneration Programme: Delivery of new council homes on the First Development Site	Housing and Modernisation Department	Michael Scorer Phone number

Link: <https://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=7136>

APPENDICES

No	Title
Appendix 1	None

AUDIT TRAIL

Lead Officer	Stuart Davis – Director of New Homes
Report Author	Camilla Jean-Baptiste – Interim Senior Project Manager
Version	Final
Dated	06 February 2023
Key Decision?	Yes

Lead Officer	Stuart Davis – Director of New Homes
Report Author	Camilla Jean-Baptiste – Interim Senior Project Manager
Version	Final
Dated	11 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
Director of Law and Governance	Yes	Yes
Director of Exchequer (for housing contracts only)	No	No
Cabinet Member	No	No
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes

Corporate Contract Review Board	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional/Community Councils/Scrutiny Team	11 May 2023	