

Item No.	Classification: Open	Date: 18 July 2023	Meeting Name: Strategic Director of Children and Adult Services
Report title:		Gateway 3 – Variation Decision The Charter School East Dulwich Phase 2 demolition and strip out works	
Ward(s) or groups affected:		Goose Green	
From:		Head of Sustainable Growth Capital Works	

RECOMMENDATIONS

1. That the Strategic Director of Children and Adult Services approve the variation of the contract with John F Hunt Regeneration Limited for demolition and enabling works for The Charter School East Dulwich Phase 2 by £887,402 excluding VAT for the additional costs to the end of June 2023.
2. That the Strategic Director of Children and Adult Services approve the variation of the contract with John F Hunt Regeneration Limited for demolition and enabling works for The Charter School East Dulwich Phase 2 by £101,242 excluding VAT for security and scaffolding costs to the end of October 2023.

BACKGROUND INFORMATION

3. On 8 December 2015, cabinet approved the council entering into a development agreement with the Secretary of State for Housing, Communities and Local Government and The Charter Schools Educational Trust (TCSET) for the council to oversee and manage the procurement and construction of a new eight form entry secondary school, The Charter School East Dulwich (TCSED) on the site of the Dulwich Community Hospital.
4. The majority of the capital funding for the school is coming from the Department for Education (DfE), from Education Skills Funding Agency (ESFA) funding. The DfE owns the freehold for the school site and is responsible for funding abnormal site costs, including asbestos remediation, for which it retained monies from the land purchase from the NHS. The council is contributing £6.55m towards the total development costs, £5m agreed in the development agreement and £1.55m agreed subsequently for inclusion of an Autism Spectrum Disorder (ASD) resource. Total development costs are currently estimated at £48.5m.

5. The completed school will deliver 1700 places, including sixth form and the 20 place ASD resource. Planning consent was granted in 2016. Construction was split into two phases to co-ordinate with the NHS hospital decant programme. Phase 1 has been built and opened in January 2019.
6. On 23 December 2019, Gateway 1 approval was given to procure a contractor to carry out demolition and enabling works at an estimated value of £1.712m to prepare the phase 2 site for the main works contractor. The works involved demolishing the remaining hospital wings, removing and disposing of asbestos and other enabling works.
7. On 8 September 2020, Gateway 2 approval was given to award the demolition/enabling works contract to John F Hunt Regeneration Limited (JFHRL) in the sum of £1,589,524 consisting of £676,690 and a provisional sum of £912,834 for asbestos removal costs.
8. In relation to the asbestos removal costs, the Gateway 2 report dated 8 September 2020 noted that “To understand the extent of asbestos, particularly in the hospital buildings which are to be retained and refurbished for use by the school, and quantify the removal costs more accurately, JFHRL was procured to carry out an asbestos removal survey which was completed in July 2020. The survey found extensive evidence of asbestos and estimated the cost of removal at £912,834. The actual costs of removal, including testing and disposal to the hazardous waste site, could be higher or lower than this figure and will only become known as works progress. In effect, the £912,834 is a provisional sum”.
9. On 3 February 2021, Gateway 2 approval was given to award the stage 1 Pre-Construction Services Agreement (PCSA) for phase 2 main works to Engie Regeneration Limited (Engie). Engie’s forecast site possession date was June 2021.
10. On 17 March 2021, Gateway 3 approval was given to increase the value of JFHRL’s contract sum to £2,524,387 to cover £687,532 for the costs of removing asbestos found in voids under two hospital wards and £253,331 to bring forward soft strip works inside the chateau from the main works contract. The works were brought forward to fill the eight week gap between the end of JFHRL’s contract and Engie’s site possession date, to keep the site secure and avoid security costs, to maintain momentum on the works and enable Engie to carry out more thorough investigations of the building to feed into their stage two proposals.
11. Subsequent to the Gateway 3 approval, in order to provide the school with additional external space by September 2021, the decision was made to procure Engie to install the three court Multi-Use Games Area (MUGA) ahead of the phase 2 main works contract award. To speed the installation process, JFHRL were instructed in May 2021 to prepare the MUGA sub-base.

12. During the strip out works of the Chateau building, an issue came up with a structural wall on the first floor, in the east wing of the chateau. JFHRL removed a series of timber walls which were noted on the demo drawings to be removed, however, the walls turned out to be structural ones supporting the floor and walls on level two and the roof. It is not clear why the building structure is so different between the east and west wings. JFHRL inserted some temporary propping. The plan was that Engie would develop structural solutions for the space. However, the works contract with Engie did not proceed, the props are still in place and require regular inspection.
13. JFHRL completed their contract in July 2021 but Engie had not delivered their stage 2 proposals by this date. To maintain site security after JFHRL's departure and after making a value for money assessment and considering other options, it was agreed with the DfE to procure 24/7 security cover through the JFHRL contract instead of separately. JFHRL employed GUK Security Services to provide a security guard who is based in the gatekeepers lodge near the old hospital entrance. One of the considerations was the need for ongoing hire and monitoring of props installed by JFHRL to provide support inside the chateau where a wall had been removed. In addition to a 24/7 security guard, the DfE has installed remotely monitored CCTV cameras at various points around the site.
14. The Director of Education was briefed on the proposed sub-base, propping and security variations on 30 June 2021 and 7 July 2021 and the Cabinet Member for Children, Education and Refugees on 22 June 2021 and 25 June 2021.
15. It was anticipated that this security and props monitoring arrangement with JFHRL would only be needed for a few weeks. However, for reasons explained in the following paragraphs, negotiations with Engie were protracted meaning the arrangements had to continue.
16. Engie submitted their stage 2 works proposals in late August 2021. However, as the tender price exceeded the budget a value engineering exercise was carried out which delayed the award of the contract. On 16 November 2021, Gateway 2 approval was given to award the stage 2 works contract to Engie subject to confirmation of additional DfE funding to meet the budget shortfall.
17. The construction market at this time was experiencing high levels of inflation, with shortages of many materials and labour because of the fallout from the pandemic and Brexit impacts. In February 2022, Engie (who had by this time been taken over by Equans), sought a further price increase. Contract negotiations with Equans and the DfE continued until in July 2022. Equans sought a third increase to their tender price. At this point the DfE and TCSET decided the works should be re-tendered.

18. Since July, the works have been re-tendered and a Gateway 2 report and recommendation is being prepared to award the stage 1 PCSA contract to a new contractor, for decision in May 2023. The forecast date for handover of the site to the contractor is late October 2023, subject to separate Gateway 2 approval and award of the stage 2 works contract.

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

Reasons for Variation

19. For additional costs for minor additional asbestos removal costs, preparation of MUGA sub-base, security boarding up works, supply of 24/7 security services on site, generator, supply and monitoring of scaffolding inside the chateau building until a new main works contractor takes possession of the site.

Future Proposals for this Service

20. Responsibility for security and the structures will pass to the appointed main works contractor when they take possession of the site to start works, estimated to be at the end of October 2023 subject to award of the stage 2 contract.

Alternative Options Considered

21. Do nothing i.e. rely on the DfE's CCTV. Rejected because the history of problems with fly-tipping (on phase 1) and trespass inside the chateau indicated CCTV by itself would not be enough to mitigate security risks and there were health and safety considerations relating to the site boundary shared with the school. The site boundaries with the school and health centre are particularly vulnerable during evenings and weekends.

22. Mobile security services in addition to DfE CCTV coverage. Rejected for the same reasons as paragraph above.

23. Procure security services under a separate contract. Rejected because of need for ongoing monitoring of support props by JFHRL.

Identified risks for the Variation

24.

Risk No.	Identified Risk	Likelihood	Risk Control
1	Financial/ programme risk -	Low/ Medium	A new main works contractor has been selected and works are programmed to start in

	<p>Delay to start of the main phase 2 works contract.</p>		<p>the autumn, subject to Gateway 2 approval of the stage 1 award in May and the stage 2 works contract award in the autumn. The site becomes the contractor's risk once they are given possession to start works.</p> <p>The programme will be kept under review and, if it looks like the stage 2 main works contract may not be awarded for any reason by October, security and scaffold monitoring arrangements will be reviewed with the DfE, as landowner, before continuing. Weekly rates are included in appendix 1 of the closed report.</p> <p>Costs are based on current rates. In the event of any unforeseen increases in the rates, savings will be sought from the contract or project budget.</p>
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Policy framework implications

25. The project contributes to delivery of the Southwark Council Delivery Plan 2022-2026 themes Supporting Families and Transforming Our Borough:

- Supporting Families - Ensure our schools are high quality and inclusive. Completing the expansion of Charter East School so more children can attend a local secondary.
- Transforming Our Borough – Close the gap in life chances. Delivering thriving and sustainable neighbourhoods.

Contract management and monitoring

26. 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 will ensure that all appropriate details of this procurement are added to the contract register via the eProcurement System.

27. The contract is managed and monitored by Sustainable Growth Capital Project Team supported by external project management and cost consultants.

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

Community impact statement

28. The project will increase the capacity of Southwark's secondary schools in the East Dulwich catchment area which will positively impact families.

Equalities (including socio-economic) impact statement

29. An Equality and Health Analysis completed in May 2021 identified no adverse impacts from the project or current procurement on people possessing protected characteristics. The project will have a positive equalities impact on young people by increasing the capacity and quality of Southwark's secondary school offer and of services for children with special needs through the inclusion of 20 place ASD resource.

Health impact statement

30. An Equality and Health Analysis prepared for the project in May 2021, identified no adverse health impacts from the project on people possessing protected characteristics. The project will have a positive health impact on young people by increasing and improving Southwark's secondary school offer for children with special needs.

Climate change implications

31. The proposed variation has no climate change implications. The contractor's Corporate Social Responsibility and Environmental Management policies acknowledge the impact of climate change include commitments to reducing the company's carbon footprint.

Social Value considerations

32. 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 contract (as outlined in the Gateway 1 report) are set out in the following paragraphs.

Economic considerations

33. The council is an officially accredited London Living Wage (LLW) employer and is committed to ensuring that contractors engaged by the council within Southwark pay their staff at least the LLW rate. The contract includes conditions requiring the payment of the London Living Wage.

Social considerations

34. The proposed variation relates to site security services and props monitoring until the main works contractor starts on site, the cost of minor asbestos removal works, and the laying of the sub base for the MUGA. The nature and staggered implementation of the elements making up the variation, implemented in order to mitigate ongoing delays to the start of the main works contract, meant it was not feasible to deliver jobs, apprenticeships or short courses. Most of the original contract was delivered during lockdown and most of its value related to specialist asbestos removal works. The planning consent for the project sets out targets for delivery of jobs, apprenticeships and short courses for each phase. Once appointed, the main works contractor will deliver those for phase 2.

Environmental/Sustainability considerations

35. The security guard is located in the gatekeeper's lodge which does not have a mains power supply so a generator is being used to supply power for heating, light and communications. The generator is a 'super silent' type to minimise noise disturbance to neighbours.

Financial Implications

36. For construction (works) contracts, the council is not the end user in relation to Domestic Reverse Charge (DRC) and notification of this will be included in the letter of award to the successful contractor.

37. The contract value including and excluding VAT is:

	Cost ex. VAT	Cost Inc. VAT
Original total cost	1,589,524	1,907,429
Total value of any previous variations	934,863	1,121,836
Value of proposed variation		
- Current additional	887,402	1,064,882
- Projected additional to the end of October	101,242	121,490
Revised total cost	3,513,031	4,215,637

38. Appendix 1 of the closed report includes a detailed breakdown of the costs and weekly rates for security and props monitoring costs

39. Costs exclude VAT based on HMRC advice on a similar construction project that VAT is reclaimable.

40. There is sufficient funding available in the project budget to meet the cost of this variation.

Investment Implications (Housing Contracts only)

41. Not applicable

Legal Implications

42. Please see the legal concurrent from the Assistant Chief Executive – Governance and Assurance

Consultation

43. Consultation is not required for this variation. Extensive public consultation was carried out for the project planning application granted consent in 2016. Delivery of the project is overseen by a Project Steering Group including the DfE and TCSET. The group meets at least monthly.

44. The Cabinet Member for Children, Education and Refugees will be consulted on this variation on 23 May 2023.

Other implications or issues

45. There are no other implications or issues for consideration.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance REF: [CAS23/25]

46. The Strategic Director notes the contents of this report and the two additional sums totalling £988,644 being requested.

47. It is noted that the current phase of the project can be met from the currently agreed project funding, but that the overall project requires further agreements with the DfE to ensure it can be funded to completion.

48. It is also noted that there may be a requirement for further security costs dependent on the timing of the award of the next phase of works which would require further agreement. These additional costs should be considered as part of the wider project costs to ensure the funding will be available to see the project to conclusion.

Head of Procurement

49. A formal concurrent is not required for this report as the estimated value is below the advertising threshold for works of this nature, as prescribed by the Public Contracts Regulations 2015 (PCR2015). However, it is confirmed that the variation recommendation as outlined is consistent with PCR2015 and the council's Contract Standing Orders, (CSOs). In accordance with CSOs, the award decision must be taken by the relevant chief officer, or under their delegated authority, in line with the department's scheme of management.

Assistant Chief Executive – Governance and Assurance

50. This report seeks the approval of the Strategic Director of Children and Adult Services to a variation of the demolition and enabling works contract for The Charter School East Dulwich Phase 2 being performed by John F Hunt Regeneration Limited, as set out in paragraphs 1 and 2 of this report.
51. This report also outlines the key aspects of the variations and why the variations are necessary. Paragraphs 21 to 23 highlight the alternative options considered and the reasons why they have been rejected.
52. The procurement of this demolition and enabling contract was not subject to the tendering requirements of the Public Contract Regulations 2015 (PCR15) due to their value being below the PCR15 threshold for works. The extension values also fall below the PCR15 works threshold.
53. Contract Standing Order 2.3 requires that no steps be taken to vary a contract unless the expenditure involved has been included in approved estimates, or is otherwise approved by the council. Paragraphs 36 to 40 outline the financial implications of these variations, in particular, paragraph 40 confirms that there is sufficient funding available in the project budget to meet the cost of these variations.

Director of Exchequer (for housing contracts only)

54. Not applicable

Director of Education (for schools contracts only)

55. The contents of this report are noted particularly budgetary and financial arrangements. I support the progression of works.

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 **18 July 2023**

David Quirke-Thornton
Designation **Strategic Director of Children and Adult Services**

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
None.

4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION *
None.

* 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
<i>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.</i>
None.

6. DECLARATION ON CONFLICTS OF INTERESTS

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

Signature



Date 18 July 2023

David Quirke-Thornton

Designation **Strategic Director of Children and Adult Services**

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).*

Signature



Date 18 July 2023

David Quirke-Thornton

Designation **Strategic Director of Children and Adult Services**

* 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
Southwark Council Delivery Plan 2022-2026	Environment, Neighbourhoods and Growth Sustainable Growth Capital Works, Tooley Street, SE1 2QH	Yvonne Shaw 07734 779652
Link: https://www.southwark.gov.uk/council-and-democracy/fairer-future/fairer-greener-safer-southwark-s-council-delivery-plan		

The Public Services (Social Value) Act 2012	Environment, Neighbourhoods and Growth Sustainable Growth Capital Works, Tooley Street, SE1 2QH	Yvonne Shaw 07734 779652
Link: https://www.legislation.gov.uk/ukpga/2012/3/enacted		
The Education Funding Agency	Environment, Neighbourhoods and Growth Sustainable Growth Capital Works, Tooley Street, SE1 2QH	Yvonne Shaw 07734 779652
https://www.gov.uk/government/organisations/education-and-skills-funding-agency		
Gateway 2 - Contract Award Approval The Charter School East Dulwich (TCSED) Phase 2 demolition and enabling works contract award. 8 September 2020	Environment, Neighbourhoods and Growth Sustainable Growth Capital Works, Tooley Street, SE1 2QH	Yvonne Shaw 07734 779652
Link: https://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=7157		
Gateway 3 – Variation Decision The Charter School East Dulwich (TCSED) Phase 2 demolition and enabling works contract award. 17 March 2021	Environment, Neighbourhoods and Growth Sustainable Growth Capital Works, Tooley Street, SE1 2QH	Yvonne Shaw 07734 779652
Link: https://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=7334		
Gateway 2 - Contract Award Approval to award the main works contract to deliver phase 2 of The Charter School East Dulwich 16 November 2021	Environment, Neighbourhoods and Growth Sustainable Growth Capital Works, Tooley Street, SE1 2QH	Yvonne Shaw 07734 779652
Link: https://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=7506		

APPENDICES

No.	Title
None	

AUDIT TRAIL

Lead Officer	David Quirke-Thornton Strategic Director of Children and Adult Services	
Report Author	Yvonne Shaw, Project Manager	
Version	Final	
Dated	10 July 2023	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance	Yes	Yes
Head of Procurement	Yes	Yes
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Director of Exchequer (for housing contracts only)	n/a	n/a
Cabinet Member	Yes	Yes
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	No	No
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team	18 July 2023	