

Item No.	Classification: Open	Date: 21 March 2024	Meeting Name: Strategic Director of Housing
Report title:		Gateway 3 – Variation Decision Main works contract for Flaxyard & Peckham Library Square	
Ward(s) or groups affected:		Peckham Ward	
From:		Managing Director of Southwark Construction	

RECOMMENDATION(S)

That the Strategic Director of Housing:

1. Retrospectively approves the prior decision to remove Peckham Library Square Scheme from the Flaxyard & Peckham Library Square building works contract reducing the contract sum to £39,106,257.
2. Retrospectively approves variations to the contract for the development of the Flaxyard site to the sum of £4,892,000.
3. Approves further anticipated variations to the sum of £2,734,000 that includes finalisation of agreed provisional sums and contract variations.
4. Notes that on 12 March 2021 Bouygues (UK) Limited were awarded a contract to take forward the development of Flaxyard and Peckham Square for the total contract sum of £46,825,665. This included £39,106,257 for Flaxyard and £7,719,408 for works relating to Peckham Library Square. At this time the total anticipated contract sum was £48,045,818 including contingency.
5. Notes that this will result in an adjusted contract sum of £46,732,257 including a contract variance of £7,626,000 from the original contract sum (for Flaxyard) approved at award of contract.
6. Notes that the approvals are sought retrospectively under contract standing orders (CSO 6.7) as set out in the body of the report and have been reported to Audit, Governance and Standards Committee

BACKGROUND INFORMATION

7. The Flaxyard and Peckham Library Square Scheme was originally part of a regeneration programme which was subsequently passed to Southwark Construction to manage. This report seeks to consolidate the governance and financial arrangements to enable the contract to be delivered in line with the council's contract standing orders.
8. The original scheme as approved by cabinet on July 2019 envisaged the delivery of housing and amenity space to Flaxyard and Peckham Library

Square. Entailing up to 120 homes on Flaxyard and a further 19 homes, a gallery, co-working space and ancillary works on Peckham Library Square; including the removal of Peckham Arch.

9. The tender process for this combined scheme was structured in a way that allowed Flaxyard and Peckham Library Square to be stated as 2 separate sites, whereby should the council decide not to progress with one of the two sites; the contractor would still be able to proceed with the other. The tender process set out that Flaxyard would proceed on commencement of the contract, with an estimated delay to the works to Peckham Library Square until May 2022.
10. On 22 December 2020 the then Strategic Director of Housing and Modernisation in consultation with the then Cabinet Member for Housing approved the Gateway 2 report for the award of the design and build contract to Bouygues (UK) Limited in the sum of £46,421,079.71 for a period of 116 weeks. Authority to agree the contract had been delegated by the cabinet at Gateway 1.
11. In April 2021 a Gateway 3 decision approved a cost variation of £404,585 to the contract in respect of firmed-up prices which had not been available at the time of letting the contract and had been noted as pending. This increased the adjusted total to £46,825,665 including the works relating to Peckham Library Square and gallery.
12. At this stage, the Flaxyard site was to commence with a provisional sum for Peckham Square and Gallery identified to allow the contract to be later varied to include the new public realm scheme.
13. In August 2021 a contract instruction was issued to Bouygues UK Ltd to omit the Peckham Library Square works. The Cabinet Member for New Homes & Sustainable Development agreed to re-phase the construction of Peckham Library Square in order to bring forward a holistic design for Peckham Square. An instruction to temporarily omit the Peckham Library Square works was necessary to avoid potentially abortive work. At that time this resulted in an adjusted total contract sum of £39,106,256.83.
14. Subsequent to this, wider regeneration proposals were developed around the Peckham Library Square site, led by the Director of Planning and Growth. This work is ongoing, and as yet, no firm decision has been made. Current proposals would include the demolition of the Peckham Arch, which has attracted mixed views during consultation.
15. At award of contract it was assumed that the Peckham Library Square works would be scheduled for a later date. However it is now clear that the Peckham Library Square proposals which were provisionally omitted in August 2021 cannot now be completed under the current contract without unduly high delay costs. Given this and the lack of certainty over any decision in relation to the Peckham Library Square in the near future, it is

recommended that the omission of these works from the contract is now formally agreed.

Flaxyard Site

16. Flaxyard site consists of three separate blocks between 3 -5 storeys delivering 96 new homes for social rent, 24 new homes for Shared Ownership and a new commercial unit facing Peckham High Street. The scheme includes improvements to the public realm including; disabled parking bays, landscaping, street lighting, children's play area and enhancements to the connecting highway. The realigned road system with the site will be adopted to ensure the streetscape is fully integrated into the wider road network and future service charges minimised.
17. The contract includes a number of provisional sums including utility connections, substations, diversions, de-contamination S278/S38 and party wall matters. These sums relate to works that have been identified but where the actual final sum is unknown. Under a JCT Design & Build contract the council is required to cover any uplift in the actual cost incurred where evidenced is presented and confirmed via the Employers Agent.
18. In addition, there have been a number of statutory changes, since the project was initially tendered, that have required the council to issue new instructions for which the cost of price, design and programme are added to the final contract sum.

KEY ISSUES FOR CONSIDERATION

Reasons for Variations

Service diversions and specification uplifts for supplies

19. The contract included provisional sums of £524,890 covering service diversion and new supplies. The total amount agreed to date is approximately £2.36 m. This includes the provision of both a new substation and backup generators that had not previously been a requirement. £1.06 m relate to new instructions required to meet updated statutory requirements. The remaining £1.3 m relates to cost increases in provisional sums assumed at award of contract.
20. The new substation requires an easement to be signed between the council and UKPN before the new cabling can be connected. This has required more extensive and protracted negotiations than anticipated. We are in the process of signing an agreed document, and the extent to which this has impacted on both cost and programme is the subject of current negotiations.

Highways works under s38/s278

21. These costs arise out of the planning requirement for improvements to public highways and footpaths under the Highways act 1980. The contract allowed for provisional sums totalling £1.32 m to cover 278 works on existing highway and landscaping built to adoptable standards. In order to ensure compliance with Highways requirements, all works to new and existing roads fall within the 278 agreement.

Party Wall Works to Block D

22. Block D, a small block comprising nine residential units for shared ownership and a commercial unit at ground floor level, is constructed immediately adjacent a privately owned block on Peckham High Street. Prior to the award of contract, it was recognised that a party wall agreement would be required to implement construction and a provisional sum provided. Intrusive surveys and a structural design for Block D had been carried out prior to tender. However further site investigations subsequently found that there were substantial underground concrete beams attached to pads at the base of the buttresses supporting the party wall. These required additional support, excavation and caused considerable delay.
Fire Safety specification uplift

23. The fire safety strategy agreed at Planning stage required amendments in order to comply with regulations that came into force at the point that the scheme started on site. This included the incorporation of an evacuation lift for each core and the installation of secondary power supplies. The implementation of these changes led to re-design and delay.

Future Proposals for this Service

24. No future proposals recommended for this service.

Alternative Options Considered

25. The variations described above are fundamental to the delivery of the contract and as noted, it is the need to make these changes during construction phase that has resulted in both the number of variations and their high cost. Although these costs are significant, the cost of abortive work, had the scheme not proceeded, would have been far greater and in practical terms, we could not cease work on a project at this stage without considerable penalties.

Identified risks for the Variation

26.

RISK		RISK LEVEL	MITIGATION ACTION
1.	Contractor delay to	High	Liquidated Ascertained Damages sums have been included as part of the contract and will

	Project delivery		be claimable should the project overrun without any justification. The contractor has been awarded extensions of time totalling some 25 weeks and is seeking a further extension. The estimated completion date for the scheme is now projected as mid-summer 2024, against a revised due date for completion of 14 Feb 2024. This presents the risk that the contractor will continue to claim extensions of time to off-set any additional costs they encounter due to delay. Provision for this is made within the contingency sought.
2.	Further Variations and Changes	Medium	There remains some risk to the scheme as detailed pricing for landscape works and the overhead costs associated with the extension of time for fire safety works are still under review and to be agreed. There is sufficient provision within the proposed contingency to absorb any likely cost increase.
3.	Unforeseen Risk Items	Low	Due to the project being in mid/late stages of delivery the likelihood of meeting further risk is reduced. It is envisaged that any item discovered at this stage will be minimal and could be met by the budget's contingency.
4.	Cost Inflation	Low	The contract is for a fixed price sum and therefore additional costs can only be claimed within the remits of the contract.

Policy implications

27. The council has a target to deliver 11,000 new council homes by 2043. Flaxyard will provide 120 affordable homes, 96 new council homes for social rent and 24 homes for shared ownership.

Contract management and monitoring

28. 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.

29. The management and administration of the build contract and the completion of the project will continue to be project managed by Southwark Construction. The contractor's performance is monitored and managed by the Employer's Agent. A Clerk of Works has been appointed to inspect progress on site and to provide a written report on a weekly basis

highlighting technical compliance, any health and safety issues. A Design Guardian is also in place to review design quality against the original agreed scheme.

30. There will be close monitoring and scrutiny of this scheme to ensure there are no further delays and additional avoidable costs. This will include a Key Milestone 6 'lessons learned' report and this has been reported to Audit, Governance and Standards Committee.

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

Community impact statement

31. Since the inception of this project there has always been a strong emphasis on inclusion with the local community regarding this project. During the consultation stage there has been local resident's involvement and proposals were consulted on in line with the Charter of Principles. The Statement of Community Involvement (SCI) provides a record of the pre-application community consultation that was carried out on the proposed development of the Flaxyard site.

Equalities (including socio-economic) impact statement

32. The new affordable homes will be available to people on the councils housing waiting list. The council's equality and diversity policies will be adhered to during the letting process.

Health impact statement

33. The provision of new quality homes provides a positive impact on health inequalities, as the new homes will be designed to current quality and space standards that will contribute towards addressing health inequalities. 96 of these homes will be for rent at council rent levels and in line with the council's letting policy. The shared ownership will continue to be managed by the council and marketed against agreed affordability criteria. Residents who are living in overcrowded conditions, or in unsuitable housing will directly benefit from this new housing. Health and wellbeing are further addressed by providing residents with individual balconies for outdoor space, along with communal landscaping including a children playground.
34. 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.

Climate change implications

35. This project complies with Building Regulations Part L that addresses the conservation of fuel and power. The buildings incorporate air-source heat

pumps, supplemented by decentralised plant rooms to assist in achieving a net-zero carbon target for the building. The building fabric design exceeds part L requirements and overall is expected to achieve over 50% carbon reduction against a 35% target.

Social Value considerations

36. 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 tender are in the GW2 and set out the targets and commitments to be delivered under the contract.

Economic considerations

37. Under the S106 Agreement, Bouygues UK Ltd are required to achieve six apprenticeships or NVQ starts and, train 23 borough residents using short courses and place 23 unemployed borough residents into sustained construction employment. To date Bouygues UK Ltd have delivered five apprenticeships/NVQ starts, 40 Employment short courses and 31 sustained employment starts, of whom 17 have sustained employment placements of 26+ weeks or longer. They are reporting 47% local labour against a target of 20% and have exceeded all other extra project KPIs.

38. Annual performance reports will continue to be presented in line with Contract Standing Orders.

Social considerations

39. The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, our contractors and subcontractors pay staff at a minimum rate equivalent to the LLW rate. The GW 1 report dated 16 July 2019 confirmed, for the reasons stated in that report that payment of LLW/Real Living Wage was an appropriate and best value requirement for this contract. Bouygues UK Ltd meet the LLW requirements and this has been monitored and evidenced for this project.

Environmental/Sustainability considerations

40. Bouygues UK Ltd currently holds monthly environmental inspections on site conducted by both site management and the environmental advisor, along with weekly progress meetings, both of which feeds into a site action plan for minimising environmental impact.

41. Bouygues UK Ltd also ensure the site is registered with the Considerate Constructors Scheme and thoroughly comply with the scheme's accredited actions surrounding sustainability and minimising environmental impact.

Financial Implications

42. The total value of the contract, including the estimated variations is £46,732,257. The provisions for on-costs have been reduced to reflect anticipated total expenditure. The original fees and on-costs have been extrapolated from the scheme appraisal and budget as these were not expressly set out in the original Gateway (GW) 2 report.
43. These costs will be found from the resources identified for the new build programme which includes borrowing. There is Greater London Authority (GLA) grant funding of £14,112,000 secured on this site. An estimated £3.7m in sales income is expected post completion during 2024/25, subject to a further red book valuation. Site Sales have been commissioned to undertake marketing and sales. All costs will be coded to project code R-5014-0000.9 for effective monitoring and reporting.
44. The scheme is funded from resources to support the New Homes Build Programme including S106, borrowing and Right to Buy Receipts. Originally there was a small general fund contribution in respect of the Peckham Library Square though this has been removed from the budget.

Legal Implications

46. Please see the comments from the Assistant Chief Executive, Governance and Assurance

Consultation

47. Local residents were consulted at each stage of the development as outlined in the Charter of Principles agreed by cabinet in November 2014. Consultation with local residents and stakeholders is ongoing.

Other implications or issues

48. Not Applicable.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance (H&M 23/097)

49. The report seeks approval from the Strategic Director of Housing to vary the Flaxyard and Peckham Square Agreement with Bouygues (UK) Limited resulting in a revised contract sum of £46,732,257 and the loss of 19 new homes, which comprises six social rent, three shared ownership and ten private sale dwellings. Reasons for the variations are set out in this report, and the financial implications section details how these costs will be funded.

Head of Procurement

50. This report seeks approval from the Strategic Director of Housing for the various retrospective recommendation numbered 1 to 6 above at a cost of £1,463,659 and total contract value of £46,732,257.
51. The Strategic Director of Housing notes the variations are detailed in paragraphs 19 to 23, the risks are detailed in paragraph 26, management and monitoring of the contract is detailed in paragraphs 28 to 30, the impact on equalities, health and climate change are detailed in paragraphs 32 to 35, there is confirmation of the payment of London Living Wage and NO additional social value commitments as a result of this variation.

Assistant Chief Executive – Governance and Assurance (Ref: ON/KM/20240314)

52. This report seeks the approval of the Strategic Director of Housing to the variation of the Flaxyard & Peckham Library Square works contract with Bouygues as further detailed in paragraphs 1-6.
53. The contract with Bouygues was subject to and awarded in accordance with the Public Contract Regulations 2015 (PCR15), and it is therefore necessary to ensure that any variation/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 19-23 note the reasons for these instructions/changes, which include variations to the scope of works and claims for delays. As noted, some of these variations relate to changes in relation to fire safety strategy which have resulted in amendments to meet these enhanced requirements. They are therefore amounts that can be made under the terms of the contract.
54. As noted in paragraph 6, these approval decisions are being sought retrospective, and have been reported to CCRB and the Audit and Governance Committee in accordance with CSO 6.7.
55. CSO 2.3 requires that no steps are taken to implement a variation unless the expenditure has been approved. Paragraphs 42-44 confirm the financial implications relating to this variation.

56. N/A

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: 15/04/2024

Designation Hakeem Osinaike, Strategic Director of Housing

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

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.***~~



Signature

Date : 15/04/2024

Designation Hakeem Osinaike, Strategic Director of Housing

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).***~~



Signature

Date 15/04/2024

Designation Hakeem Osinaike, Strategic Director of Housing

* 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 Main Works for Flaxyard and Peckham Library Square Dec 2020	Housing/Southwark Construction	
Link: [..\..\Gateway 2\Gateway 2 Main Works for Flaxyard and Peckham Library Square - open.pdf]		
Gateway 3 Variation decision - Main Works for Flaxyard and Peckham Library Square April 2021	Housing/Southwark Construction	
Link: [..\GW 3 Final Documents GW3 15 April 2021]		

APPENDICES

No	Title

AUDIT TRAIL

Lead Officer	Stuart Davis, Director of New Homes
Report Author	Carmel Dillon, Project Manager

Version	Final	
Dated	15 th April 2024	
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)	No	No
Cabinet Member	Yes	Yes
Contract Review Boards		
Departmental Contract Review Board	Yes	None
Corporate Contract Review Board	No	No
Cabinet Member	Yes	Yes
Date final report sent to Constitutional/Community Councils/Scrutiny Team	15 April 2024	