

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 17 March 2021	<b>Meeting Name:</b> Strategic Director of Children's and Adults' Services
<b>Report title:</b>		<b>Gateway 3 – Variation Decision</b> The Charter School East Dulwich (TCSED) Phase 2 demolition and enabling works contract award.	
<b>Ward(s) or groups affected:</b>		Goose Green South Multi Ward area	
<b>From:</b>		Head of Regeneration, Capital Works & Development	

### **RECOMMENDATION(S)**

1. That the Strategic Director of Children's and Adults' services approves the variation of the contract with John F Hunt Regeneration Limited for demolition and enabling works for The Charter School East Dulwich Phase 2 to increase the existing contract sum from £1,583,524 to £2,524,387 to include:
  - i) £687,532 for additional asbestos removal costs and
  - ii) £253,331 to extend the scope of works to include soft strip works in the chateau.
2. That the Strategic Director of Children's and Adults' Services notes that the council can reclaim the asbestos removal costs from the DfE as outlined in paragraph 21 of this report.

### **BACKGROUND INFORMATION**

3. On 8 December 2015, cabinet approved the Council entering into a development agreement with the Education Funding Agency (EFA) for the Council to oversee and manage the procurement and construction of a new eight form entry secondary school, TCSED, on the site of the Dulwich Community Hospital.
4. The completed school will deliver 1700 places, including sixth form and a 20 place Autism Spectrum Disorder (ASD) resource located in the refurbished chateau.
5. The estimated total development costs of the school is £42.4m funded by EFA (£36.542m) and the Council (£5.9m)
6. Planning consent was granted in 2016. Phase 1 of the school opened in January 2019.
7. The Department for Education (DfE) bought the site freehold from the NHS. Under the sale agreement, the DfE retained a sum from the land payment to cover asbestos removal costs on each phase. The development agreement makes provision for the council to recover asbestos removal costs.
8. On 23 December 2019, GW1 approval was given to procure works at an estimated value of £1.712m to demolish the remaining hospital wings, remove and dispose of asbestos and carry out other enabling works to prepare the site for the main contractor.
9. On 8 September 2020, GW2 approval was given to award the demolition/enabling works contract to John F Hunt Regeneration Limited on the following basis:

- i) The award of the demolition and enabling contract for phase 2 of The Charter School East Dulwich project to John F Hunt Regeneration Limited in the sum of £1,589,524 consisting of £676,690 plus a provisional sum not to exceed £912,834 for asbestos removal costs.
- ii) A project contingency sum of £122,476 to meet any unforeseen costs. This sum is the difference between the £1.712m approved at GW1 stage and £1,589,524.
- iii) The decision to approve any spend against the project contingency sum be delegated to the Director of Education.

10. In relation to asbestos removal costs and the contract award, the GW2 report dated 8 September 2020 noted:

- i) "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, John F Hunt Regeneration Limited was procured to carry out an asbestos removal survey which was completed in July. 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." and
- ii) "All the tenders excluded asbestos removal costs. Because asbestos surveys were not available at the time the tenders were issued, it was not possible for tenderers to quantify the costs accurately so they were excluded".

11. The demolition and enabling works started on 28 September 2020 and are programmed to complete on 6 April 2021. The works include asbestos removal and demolition of the remaining ward blocks, asbestos removal in the chateau being retained and other site enabling works.

12. Expenditure to date against the demolition contract is £1,605,633 which is £16,108 above the approved contract award. The council is contractually obliged to pay the invoices.

13. On 3 February 2021 GW2 approval was given to award a Pre-Construction Services Agreement (PCSA) for phase 2 main works to Engie Regeneration Limited (Engie). Engie's programme estimates site possession on 1 June 2021. This date is dependent on the council awarding the construction contract by 31 May 2021.

14. The main works construction contract will involve refurbishment of the chateau building, construction of new hall extension, MUGAs and landscaping works.

## **KEY ISSUES FOR CONSIDERATION**

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

#### **Reasons for Variation**

15. During the course of the demolition works, the contractor found widespread asbestos. A large amount was found in loose bags in voids under the ground floor of hospital wards 3 and 4. The bags, which appear to have been intentionally hidden there by a previous contractor, had been there for some time and deteriorated. It was recommended by our technical adviser (AMR Consult) and cost consultants (RPP) and agreed with the DfE, The Charter School and Charter Trust that the safest and most cost effective way of dealing with this asbestos was for the contractor to pick out the bigger pieces of asbestos and encapsulate the remainder. It is the Council's responsibility to mitigate costs and safety risks so the encapsulation works have proceeded and the costs been incurred. Fortunately the encapsulated area sits under the area that will be occupied by the new MUGA and there are no plans to run services through that area in the future.
16. The programme shows a gap of approximately eight weeks between John F Hunt Regeneration Limited leaving site and Engie taking possession where the site is unoccupied. To mitigate the security and cost risks arising from this, it is proposed to bring forward 'soft strip' works inside the chateau from the main contract and add them to John F Hunt Regeneration Limited's contract.

#### **Future Proposals for this Service**

17. N/A

#### **Alternative Options Considered**

18. Stop the demolition and asbestos removal works pending GW3 approval for the additional costs. This would have delayed the works and generated higher additional costs.
19. Leave the site unoccupied between John F. Hunt regeneration Limited leaving site and Engie taking possession. This is not recommended because of the security risks. Even with security, the site is vulnerable to intruders. An empty site is also a risk to children at the school next door who may be tempted to try and enter it.
20. Extending the PCSA with Engie for them to employ John F. Hunt Regeneration Limited to carry out the soft strip works. Engie would add overheads and profits to the costs making this route more expensive so is not recommended.

#### **Identified risks for the Variation**

21. Under the development agreement, asbestos removal costs are payable by the DfE. The council pays the costs up front then reclaims them from the DfE. The DfE has been briefed on the additional asbestos, on the reasons, options and costs and agreed that encapsulation was the best solution.
22. Additional soft strip works in the chateau will take John F Hunt approximately nine weeks which should mean the site remains occupied until the award of the main

contract. If the contract award is delayed and the site left vacant, the DfE, as freeholder, will arrange and pay for security during this period. However the costs will be deducted from the DfE's project budget.

### **Policy implications**

23. The provision of new, additional school places is essential to the delivery of the council's strategy for sufficient pupil places and forms a key part of the Secondary Investment Strategy. Phase 2 of the TCSED will allow the council to deliver a total of eight form entry of secondary school places that will ensure it has capacity to meet existing and future projected need and provide an element of choice for parents applying for secondary school places in the borough. Projections show that, without the school, the authority will be short of secondary places by approximately two forms of entry in 2021.
24. This provision also fully advocates the Borough Plan 2018/19 – 2021/22 priorities to give a great start in life, with a vision to offer great schools and an opportunity to thrive for a fairer future.

### **Contract management and monitoring**

25. The council's contract register publishes the details of all contracts over £10,000 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.

### **Community Impact Statement**

26. The 2015 Equality Analysis identified no adverse impacts on people with protected characteristics.
27. Since the 2015 analysis, a 20 place ASD resource has been designed into the scheme, improving positive equality and health impacts.
28. The project will increase the capacity of Southwark's secondary schools in the East Dulwich catchment area which will positively impact on families.
29. The Equality Analysis will be reviewed and updated at main contract award stage.

### **Social Value considerations**

30. 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 (as outlined in the Gateway 1 report) are set out in the following paragraphs in relation to the tender responses, evaluation and commitments to be delivered under the proposed contract.

### **Economic considerations**

31. The variation to move the soft strip works from the main works to the John F Hunt Regeneration Limited contract will help to de-risk the project for the Council by

maintaining a presence on site Procuring the works directly is avoids the costs of overheads and profits the main contractor would apply.

### Social considerations

32. 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 Invitation To Tender (ITT) included the Council's contract conditions requiring the payment of LLW.

### Environmental/Sustainability considerations

33. Health & safety aspects of the demolition, traffic, and noise and dust nuisances are the primary concern. The contractor is required to produce an environmental management plan compliant with planning, environmental and other legal requirements and good practice, including communications plan for local residents, businesses and other stakeholders.

### Financial Implications

34. The contract sum approved at GW2 stage, excluding the cost of performance bond, was £1,583,524. The projected final account including the additional asbestos removal costs is £2,271,056.
35. In addition, the costs of the additional soft strip out works inside the chateau are estimated at £253,331 based on the Engie Regeneration Ltd tender return. If approved, these works will be removed from the main contract so the impact should be cost neutral.
36. The revised contract award including additional asbestos removal costs and additional soft strip works and excluding performance bond at £6,000 is £2,524,387

Cost	Sum (£)
GW2 contract sum excluding £6k performance bond	670,690
GW2 provisional sum for asbestos removal	912,834
<b>Total approved excluding £6k performance bond</b>	<b>1,583,524</b>
Removal of asbestos sheets in wards 3 & 4	405,924
Asbestos found elsewhere	131 ,133
Opening up works to facilitate asbestos removal e.g. ceilings	44,950
Management of asbestos removal and docs for the DFE	105,525
<b>Total additional asbestos costs</b>	<b>687,532</b>
<b>Projected final account</b>	<b>£2,271,056</b>
Additional strip out works in the chateau	253,331
<b>Revised Contract award Total</b>	<b>2,524,387</b>

37. The cost of the performance bond has been deducted because the contractor has provided a parent company guarantee.
38. Asbestos removal costs are outside the project budget as they are payable by the DfE under the development agreement however the council has to pay the costs up front then reclaim them from the DfE.
39. The project budget is set on the basis that all asbestos removal costs are reclaimed from the DfE. On this basis, the additional asbestos removal costs can be contained within the current project budget (cost code E-1406-0340). The soft strip works are already accounted for within the project budget.

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

40. N/A

#### **Legal Implications**

41. Refer to the legal concurrent from the Director of Law and Governance.

#### **Consultation**

42. The project was extensively consulted on for the planning application granted consent in 2016.
43. The Cabinet Member for Children, Young People & Education was consulted on the variation on 19 February 2021.

#### **Other implications or issues**

44. None

#### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

##### **Strategic Director of Finance and Governance CAS20/035**

45. The Strategic Director of Finance and Governance notes the contents of the report in particular the financial implications section. Whilst this variation should not impact the remaining approved project budget, the budget is almost fully committed and so savings must be maximised wherever possible.
46. The funding agreement states that asbestos costs incurred by the authority can be paid for via a £1.3m retention sum. It also states that 'the Authority will not be liable for any Asbestos costs above the Retention Sum'. However, it is important that asbestos removal is delivered in line with the funding agreement and costs reclaimed in a timely manner.
47. Whilst it is noted that the additional works to strip out the chateau are cost neutral as the work will no longer be provided by the main works contractor, it is important to ensure that reduction in the cost of the mains works contractor is realised so that the project budget as a whole is not affected by this variation.

### **Head of Procurement**

48. Details of the variation is contained in paragraphs 15 to 16 the risks are detailed in paragraphs 21 to 22 with management and monitoring of the contract detailed in paragraph 25.

### **Director of Law and Governance**

49. This report seeks the approval of Strategic Director of Children's and Adults Services to a variation of the existing demolition and enabling works contract which is being performed by John F Hunt Regeneration Limited. This report sets out the extent of the required variation and the reasons why the variation is necessary.

50. The council's Contract Standing Orders (CSO) 6.6.3 provides that the decision to allow the variation of this contract can be taken on the basis of a written report by the relevant chief officer or under his/her delegated authority in line with the department's scheme of management.. Paragraph 9 of this report states that under the GW2 report, a decision to approve any spend against the project contingency sum be delegated to the Director of Education. However, as the contingency sum outlined in the GW2 report is finite and is insufficient to cover the additional costs required under this GW3 report, the Strategic Director of Children's and Adult's Services remains the appropriate decision taker.

51. CSO 2.3 provides that a variation decision may only be made if the expenditure has been included in approved revenue or capital estimates or has been otherwise approved by, or on behalf of the Council. Paragraph 39 of this report confirms how the proposed additional expenditure will be funded.

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

52. N/A

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

53. I would support the recommendations on the basis of para 38 - Asbestos removal costs are outside the project budget as they are payable by the DfE and can be recovered.

## **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



.....  
David Quirke-Thornton

Date.

10/05/2021

Designation    **Strategic Director for Children and Adults**

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

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

<b>1. DECISION(S)</b>
As set out in the recommendations of the report.
<b>2. REASONS FOR DECISION</b>
As set out in the report.
<b>3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION</b>
<b>4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION *</b>
N/A

\* 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.

<b>5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST</b>	
<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>	
N/A	
<b>6. DECLARATION ON CONFLICTS OF INTERESTS</b>	
I declare that I was informed of no conflicts of interests.	
Signature .....	Date: 10/05/2021
David Quirke-Thornton	
Designation Strategic Director for Children and Adults	

**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).\*

... .

Date...

\* 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
<b>Gateway 2 - Contract Award Approval</b> The Charter School East Dulwich (TCSED) Phase 2 demolition and enabling works contract award.	Regeneration Capital Works and Development	Yvonne Shaw Project Manager  Mobile : 07734 779652
Link not available. For a copy contact <a href="mailto:yvonne.shaw@southwark.gov.uk">yvonne.shaw@southwark.gov.uk</a>		
<b>Gateway 2 - Contract Award Approval</b> Award of a Pre-Construction Services Agreement for phase two of The Charter School East Dulwich project	Regeneration Capital Works and Development	Yvonne Shaw Project Manager  Mobile : 07734 779652
Link not available. For a copy contact <a href="mailto:yvonne.shaw@southwark.gov.uk">yvonne.shaw@southwark.gov.uk</a>		

## APPENDICES

None

## AUDIT TRAIL

<b>Lead Officer</b>	Bruce Glockling, Head of Regeneration Capital Works & Development	
<b>Report Author</b>	Yvonne Shaw, Project Manager	
<b>Version</b>	Final	
<b>Dated</b>	12 March 2021	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
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 – N/A	No – N/A
Cabinet Member	Yes	Yes – none received
<b>Contract Review Boards</b>		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	Yes	Yes
<b>Date final report sent to Constitutional/Community Councils/Scrutiny Team</b>	10/05/2021	