

Item No.	Classification: Open	Date: 26 May 2021	Meeting Name: Strategic Director of Finance and Governance
Report title:		GW3 - Approval of Commercial Way contract cost increase	
Ward(s) or groups affected:		Peckham Ward	
From:		Director of New Homes	

RECOMMENDATION(S)

1. That the Strategic Director of Finance and Governance:
 - Approves the variation to Commercial Way new build contract with Durkan Limited (Durkan) at an additional scheme cost of £4,836,486.
 - Inclusive of a variation to the contingency for the above contract to maintain a 5% build cost contingency.
 - Notes the reduction of £1,026,762 in the estimated on-costs associated with the contract.
 - Notes the revised anticipated contract completion date of December 2023

BACKGROUND INFORMATION

2. This report seeks approval of a variation to the build contract between Durkan and the council awarded on 12 November 2020 for the construction of 109 new build flats across 4 blocks at Commercial Way, Peckham.
3. The new development at Commercial Way will comprise of a mixed tenure development with 74 homes for council rent and 35 for shared ownership.
4. This report is seeking approval for additional funding to reflect the variations necessary for the main contract, on-costs and a revised contingency amount of 5% of the increased works costs.

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

5. Removal of below ground obstructions, upgrade the building fabric for Part B Compliance, Diversion of the existing district heating service.

Reasons for Variation

- Reasons for the variation are threefold: provisional sums have been exceeded for items such as BT diversions, muckaway and heating and hot water diversions. The requirement to adhere with Part B Building regulations which includes sprinklers and enhancement to the external walls to allow EWS1 compliance. Thirdly, Durkan have uncovered ground obstructions that require breaking out and excavating to allow for piling the new buildings.

Future Proposals for this Service

- No future proposals recommended for this service, however lessons learned will apply to other projects. The contingency allowed for on this scheme was not sufficient in light of changes to Part B of the Building Regulations that have been implemented post tender. A higher contingency fund should be considered for future projects to take into consideration the delays from awarding the contract to contract execution with pending legislative change. Sites should remain static between tender issue and start on site – muckaway costs exceeded the provisional sum because site conditions changed between survey information and site possession. Historic site use should be factored in for when commissioning site surveys pre-tender.

Alternative Options Considered

- The council has already entered into a JCT D&B contract with Durkan. The items identified by Durkan and ratified by the council's appointed Employers Agents Martin Arnold are critical to the delivery of the scheme. The only other option would be to de scope the contract to cover enabling work to date only and secure the site pending a decision on future use.
- The council would also suffer reputational loss for halting a prominent scheme in this ward. Delaying it further is likely to expose the council to expensive remobilisation fees and indexation. The scheme still represents value for money even with increased costs.

Identified risks for the Variation

10.

RISK		RISK LEVEL	MITIGATION ACTION
1.	Contractor risk of insolvency	Low	The New Homes Team will carry out quarterly credit check to ensure the contractor financial accounts are healthy contractor.
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	Sharpe Pritchard Solicitors for the new homes team have provided advice on wording regarding Covid19 clauses to be added to the contract and financial assistance we can offer to contractors
4.	Further Cost Implications	Medium	Durkan have presented a worst case scenario, this does not represent guaranteed maximum price. Martin Arnold advise that we may see reduction in proposed particularly for ground obstructions which make up the biggest singular estimate.
5.	Loss of funding	Medium	This scheme is grant funded under the GLA's 2016-21 Affordable Homes Programme and has drawn down 75% of allocated grant. An abortive start leaves the council open to grant recovery

Policy implications

11. The policy implication of not approving the variation and stopping work onsite would be the impact to the councils 11,000 new homes target.

Contract management and monitoring

12. The management and administration of Durkan's appointment and the completion of the project will continue to be project managed through the new homes team.
- 13.
14. The contractor's performance is monitored and managed by Martin Arnold for the duration of the project. A Clerk of Works will be appointed imminently and will inspect progress on site once a week and provide a written report on a weekly basis highlighting the quality of the contractors workmanship, flag any health and safety issues and will monitor progress against programme. The Project Manager for this scheme monitors Martin Arnold's

performance on a monthly basis using Key Performance Indicators which is also reviewed by the Development Manager. Annual performance reviews will also be undertaken in accordance with contract standing orders.

Community Impact Statement

15. This project is in the Peckham ward and North Peckham estate community profile. The impact on local people will be the noise and disruption during the works particularly breaking out the ground obstructions. Durkan have met with the councils environmental health team in preparation for a S61 licence and programmed work to minimise disruption where possible.
16. The redevelopment of this site will benefit residents on the North Peckham Estate because 50% of the new council rent homes will be let via the local lettings policy and the remaining will be allocated via Choice Based lettings. This site will be providing a mixture of 1 bed, 2 bed and 3 bed flats and eight wheelchair accessible flats. The new homes will benefit single people, couples, people with mobility problems and families. This scheme is increasing the supply of affordable, good quality homes and will benefit Southwark's communities. The shared ownership homes will allow people in the local community to purchase property shares in a high value area that would be usually unachievable for mid range and lower incomes.

Social Value considerations

17. 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

18. The main works at Commercial Way will be completed on 31/12/2023

Social considerations

19. Durkan will recruit apprentices, through their sub-contractors. They have a contractual obligation to provide for four apprentices as per the councils requirements and pay the London Living wage (LLW). The Public Services (Social Value) Act 2012 requires that the council consider, before commencing a procurement process, how wider social, economic and

environmental benefits that may improve the wellbeing of the local area can be secured.

Environmental/Sustainability considerations

20. The scheme will connect to the existing district heating network assisting the council in achieving reduced carbon emissions.

Financial Implications

21. The total value of the contract, including the variations is an increase of 14% of the contract sum. The variation will be resourced from the resources identified for the new build programme which includes borrowing. There is secured GLA Grant funding secured for this scheme/already drawn down. The budget will be derived from the unallocated new build budget

Investment Implications (Housing Contracts only)

22. Not applicable.

Legal Implications

23. Please see the comments from the Director of Law and Governance

Consultation

24. Consultation with residents or a tenant's panel for this variation is not required.
25. During the design development, residents on the North Peckham estate were consulted about the scheme proposals. Resident's and the T&RA participated in a project group. The Project Manager attended the North Peckham and Commercial Way North TRA to update on the scheme proposals.
26. The council organised a "Meet the Contractor" event on 1 December 2020 to allow residents an opportunity to meet the contractor and ask any questions they may have had regarding the project construction. The event was well attended and the new homes team alongside the contractor were able to provide a useful update on the scheme as there had been long a gap from planning consent to start on site.
27. The contractor currently keeps residents' updated on the project construction by hand delivering newsletters on a quarterly basis. Contact details of council officers and the contractor are included in the newsletter should residents wish to discuss the scheme with key stakeholders.

Other implications or issues

28. Martin Arnold advise that the variation will add 36 weeks to the anticipated practical completion date of April 2023 taking practical completion to December 2023.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (H&M 21/021)

29. This report seeks approval from the Strategic Director of Finance and Governance for a variation to the contract with Durkan Limited to deliver new homes at Commercial Way Peckham. The financial implications section of the report sets out how the additional costs will be provided for. The reasons for the variation may well impact on other schemes, and as the report highlights, it is important that these risks are addressed in subsequent procurement exercises for the delivery of new homes.

Head of Procurement

30. This report seeks approval from the Strategic Director of Finance and Governance for new build units at Commercial Way, Peckham awarded to Durkan Limited and a revised contingency amount.
31. The reasons for the variation are detailed in paragraph 6 and the risks are detailed in paragraph 10.
32. The variation is allowable under Public Contract Regulations and the councils Contract Standing Orders.

Director of Law and Governance

33. This report seeks the approval of the Strategic Director of Finance and Governance to the variation of the agreement with Durkan in relation to the Commercial Way new build contract as further detailed in paragraph 1. In accordance with contract standing order 6.6.3(c), this decision is reserved to the Strategic Director of Finance and Governance after consideration of the report by CCRB.
34. As the original appointment of Durkan was subject to, and awarded in accordance with the Public Contract Regulations 2015 (PCR15) it is necessary to ensure that any variation to be made to the contract is permitted within those procurement regulations. Regulation 72 permits modifications to be made to contracts during their term, in certain circumstances. These include where there are economic or technical reasons for having the contractor perform necessary additional works, services or supplies (which were not included in the initial procurement) where it would otherwise cause significant inconvenience or substantial duplication of costs for the contracting authority. In addition, the change will only be allowed if it does not result in an increase in price of more than 50% of the value of the original contract. Alternatively if an event or set of circumstances occurs which a contracting authority acting diligently could

not have foreseen, it is possible to modify the contract without a further procurement, provided that the modification does not alter the overall nature of the contract and does not result in an increase in price of more than 50% of the value of the original contract. Having considered the circumstances noted in this report for this proposed variation, it is considered that Regulation 72 can be relied upon to agree these changes.

35. Contract standing order 2.3 requires that no steps are taken to vary a contract unless the expenditure involved has been included in approved estimates, or is otherwise approved by the council. Paragraph 20 confirms the financial implications of this variation.

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.....

16 June 2021

Date.....

Duncan Whitfield, Strategic Director of Finance and Governance

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 *

n/a

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.***~~

(* - 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
Title of document	Title of department / unit Address 160 Tooley Street	Name Elisha Stewart

Gateway 2 Works Contract for the New Homes Delivery Programme – Commercial Way		0207 525 3069
Link: https://moderngov.southwark.gov.uk/documents/s85026/Report%20Gateway%20%20Works%20Contract%20for%20the%20New%20Homes%20Delivery%20Programme%20-%20Commercial%20Way.pdf		

APPENDICES

No	Title
n/a	

AUDIT TRAIL

Lead Officer	Stuart Davis – Director of New Homes	
Report Author	Camilla Jean-Baptiste – Interim Project Manager	
Version	Final	
Dated	26 May 2021	
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
Cabinet Member	n/a	n/a
Date final report sent to Constitutional Team		