

Cabinet Member Report



City of Westminster

Meeting:	Cabinet Member for Finance, Property and Regeneration
Date:	4 September 2019
Classification:	For Publication with Partial exemption – Part B.
Title:	Ebury Bridge Estate Renewal – Approval to award Demolition Contract and Delegated Authority to enter into various works Contracts\Agreements
Ward Affected:	Churchill
City for All:	<p>This proposed estate renewal will meet the Council’s City for All objectives. A City that Celebrates its Communities and includes a transparent engagement process with residents at its centre and which has established the Community Futures Group (CFG) to consult on all options and scenarios being considered. Renewal will promote A City of Opportunity by providing more homes of all types and tenures to create a vibrant community which is full of opportunity. Renewal of the Ebury Bridge estate is a significant chance to strengthen a Healthier and Greener City through creating high quality homes and a healthier, greener environment that connects better to surrounding communities and the wider area.</p>
Key Decision:	Yes
Financial Summary:	<p>The Proposals set out in this Cabinet Member Paper do not change the position outlined in the Cabinet Member Paper dated 13 March 2019.</p> <p>It remains that Ebury Bridge Estate Renewal results in additional expenditure and income within the HRA. This is in line with the net budget approved in the 2019/20 Housing Revenue Account (“HRA”) Business Plan. However the profiling of expenditure and receipts does impact on HRA resources by the end of the 30 year Business Plan period. The expenditure by WHIL can be accommodated within the current Westminster Housing Investments Limited (“WHIL”) Business Plan and associated funding allocation within the General Fund. A further report is proposed in respect of future Ebury Phases. At this stage, the work</p>

undertaken demonstrates that the overall Business Case for the scheme as a whole remains sound.

Report of: Barbara Brownlee, Executive Director Growth, Planning and Housing

1. Executive Summary

1.1. In March 2019, the Cabinet Member for Finance, Property and Regeneration:

- (i) Approved the revised regeneration tenure mix proposals for Ebury Bridge estate
- (ii) Approved the planning application approval approach and construction phasing approach for the regeneration of Ebury
- (iii) Approved the development of Ebury Phase 1 being delivered by the Council and funded through the HRA, and General Fund in respect of WHIL
- (iv) Approved an additional budget allocation in the HRA of £24.24m over and above the provision within the 2019/20 HRA Business Plan to finance the Phase 1 changes set out in the Cabinet Member Report dated 13 March 2019 and noted that the General Fund's existing allocation to WHIL was sufficient for Phase 1
- (v) Approved the changes to the OBC, as approved in July 2018, and set out in Appendix A to the Cabinet Member Report dated March 2019
- (vi) Approved the appointment of the Arup Group to undertake and deliver the design development work required to deliver the overall planning strategy for Ebury and to support the delivery of Phase 1 directly by the Council
- (vii) Approved the procurement of a Demolition Contractor and a Design and Build contractor to both enable and deliver Phase 1 construction works on behalf of the Council
- (viii) Noted that further work is being undertaken to develop the proposal for delivery of Ebury Phase 2 and an appropriate selection and procurement of a partner to support the Council in the delivery of this phase.

- 1.2. Since the Cabinet Member Paper dated 13 March 19, the planning pre-application consultation will commence in September 2019 following the recent publication of the City Plan 2019. The City Plan has specific Ebury regeneration guidance which is currently being accommodated in the new build design proposals.
- 1.3. The Council intends to demolish and carry out works to the Ebury Bridge Estate within the initial phases of development and has been, and continues to be, in discussion with the residents in the blocks impacted by the proposed demolition and works.
- 1.4. This paper brings together a number of process approvals that are required to deliver against the strategic approvals that have already been granted for Ebury and avoids a number of separate approval papers that would add a further 16-20 weeks on the overall programme. Given the scale and nature of the Ebury estate regeneration scheme, the value of the contracts being awarded on Ebury are, typically, all in excess of the current £1.5m contractual limit that requires Cabinet Member approval.
- 1.5. This report seeks to obtain approval from the Cabinet Member for Finance, Property and Regeneration to the award of a contract for Phase 1 demolition to a selected contractor, with the option to extend their Contract for additional phases as blocks become vacant and subject to contractual performance.
- 1.6. This report is also seeking to delegate from the Cabinet Member for Finance, Property and Regeneration approval to the Executive Director of Growth, Planning and Housing in respect of executing the following:
 - The Meanwhile Use Works Contract;
 - The Pre-Construction Services Agreement for the Phase 1 Main Works;
 - The Multi-Disciplinary Design Team Appointments; and
 - Any basic asset protection agreements or asset protection agreements with Network Rail and utility providers as may be required.

2. Recommendations

- 2.1. That Part B of this report be exempt from disclosure by virtue of the Local Government Act 1972, (as amended) in that it contains information relating to

the financial or business affairs of any particular person (including the authority holding that information).

2.2. That the Cabinet Member for Finance, Property and Regeneration:

2.2.1 Approves the award of a contract for the demolition of Ebury Bridge Phase 1 to a selected contractor over the period 1 October 2019 to 1 October 2021, with **the option to extend** (no commitment at this stage) for additional potential phases of demolition as follows:

- Mercer and Pimlico (Phase 2 blocks with low levels of occupancy) - Additional year
- Remaining Phase 2 blocks - Additional 2 years

As set out in section 5 of this report.

2.2.2 Delegates authority to the Executive Director of Growth, Planning and Housing to procure, award and execute a contract with a selected contractor in respect of the Meanwhile Use Works as set out in section 6 of this report.

2.2.3 Delegates authority to the Executive Director of Growth, Planning and Housing in consultation with the Executive Director of Finance and Resources to award and execute:

2.2.3.1 the option to extend the Demolition Contract to Mercer and Pimlico as set out in section 5 of this report;

2.2.3.2 the Pre-Construction Services Agreement for Phase 1 to a selected Contractor as set out in section 7 of this report; and

2.2.3.3 the contracts for multi-disciplinary services for Phase 1 and Phase 2 as set out in Section 8 of this report with a selected consultant.

2.2.4 Delegates authority to the Executive Director of Growth, Planning and Housing in consultation with the Executive Director of Finance and Resources to agree, enter into and execute any required Basic Asset Protection Agreements, or Asset Protection Agreements, as may be required, with Network Rail or other Body as set out in section 9 of this report.

3. Reasons for Decision

3.1 The Ebury Bridge Estate is one of the five priority estates identified in the Council's Housing Renewal Strategy (2010) as needing significant improvement and investment. In line with the Council's City for All objectives, the overarching objective of regenerating Ebury Bridge Estate is to create a comprehensive renewal that brings about physical, economic and sustainable change that creates additional homes and improves the lives of residents,

businesses and visitors alike. Good progress has been made to date in enabling the scheme and the proposals in this report will maintain that momentum and commence delivery of the Council's promises to the existing community.

4. Ground 10 proceedings

- 4.1 As aforementioned the Council has been and is in discussion with residents impacted by the proposed demolition works.
- 4.2 The Council has been undertaking rehousing assessments for all affected tenants and suitable alternative accommodation has been offered which many tenants have accepted.
- 4.3 In order to protect its position, the Council has initiated ground 10 proceedings to ask the Court to make an order for possession in respect of the remaining secure tenancies in the affected blocks. A Court hearing date in this regard is scheduled for 20 September 2019.
- 4.4 As part of these proceedings the Council needs to demonstrate that they intend, within a reasonable time of obtaining possession of the dwelling house to demolish or reconstruct the building or part of the building comprising the dwelling house.

5. Demolition Works Contract

- 5.1 The Ebury Phase 1 vacant possession deadline to allow the commencement of demolition contract work is October 2019.
- 5.2 The Procurement Assurance Board reviewed the procurement strategy and a tender was issued in accordance with the Public Contract Regulations 2015 and the Council's Procurement Code.
- 5.3 The selection of a demolition contractor, on the basis of a single stage design & build contract, is now complete and the start on site date for the contractor is October 2019.
- 5.4 The Procurement Assurance Board recommended and approved on 6 August 2019 that Cabinet Member for Finance Housing and Regeneration approved the award of a contract for the Ebury Bridge Demolition to a selected contractor for Phase 1 over the period 1 October 2019 to 1 October 2021.

- 5.5 The Award includes the option to extend for additional potential phases of demolition works as follows:
- 5.5.1 Mercer and Pimlico (Phase 2 blocks with low levels of occupancy) for an additional 1 year; and
- 5.5.2 All remaining blocks in Phase 2 for an additional 2 years.
- 5.6 If the Contract is extended it will run for a maximum of 5 years, subject to Contract Conditions and contractual performance.
- 5.7 The Contract will only be extended on the basis of the following:-
- Successful completion of the previous phase
 - Budget approval
 - Programme approval
 - Continued financial standing assessment – must pass
 - Successful/high performance during previous Phase as per contract management and KPI's
- 5.8 The delegated decision to award and execute the option to extend for Mercer and Pimlico demolition works is subject to obtaining the approval of the Executive Director of Finance.
- 5.9 A decision to award and execute the option to extend for the remaining blocks in Phase 2 shall be subject to the Cabinet Member's decision in consultation with the Executive Director of Finance.

6. Meanwhile Use Works Contract

- 6.1 In the July 2018 Cabinet Member report, a decision was taken to implement a 'Meanwhile Use' strategy. The Meanwhile Use was intended to activate the former Edgson House site with small business units which were attractive to 'start up' businesses. This would be effective in incubating smaller businesses which may take a commercial residence in the future development, but also raise the profile of the immediate area and provide some social value to the remaining residents and local communities which are affected by the regeneration.
- 6.2 Following the July 2018 report, the design for the Meanwhile Use structures has been developed, a planning application was submitted on 25th June 2019 and a RIBA stage 4 tender pack has been prepared for publication on 26th July 2019.

- 6.3 A tender has been issued for the Meanwhile Use, based upon the Procurement Assurance Board recommendations of a single stage traditional contract with Contractors design.
- 6.4 Tender returns are expected in the first week in October 2019, which coincides with the scheduled completed demolition of Edgson House.
- 6.5 To ensure a seamless transition between the demolition contract and the commencement of the Meanwhile Use construction, it is imperative that the Council can expedite the award and execution of the Meanwhile Use main works contract.
- 6.6 This paper is therefore seeking approval to delegate authority to the Executive Director for Growth, Planning and Housing to proceed with the procurement, award and execution the Meanwhile Use main works contract.

7. Phase 1 – Pre Construction Services Agreement

- 7.1 The rationale for seeking delegated authority to enter into this contract is that it is fundamental to the critical path of the delivery programme.
- 7.2 A tender has been advertised in the Official Journal of the European Union for the construction of new homes for the Ebury Bridge Estate Regeneration. The journal entry covers the pre-construction agreement, main works contract and later phases. The process includes checking the financial stability of the company, the commercial viability, approach as well as the technical capacity and capability.
- 7.3 The procurement strategy of Two Stage Design and Build has been endorsed by the Procurement Assurance Board.
- 7.4 Regarding the Pre-Construction Services Agreement, the success of the two-stage procurement strategy requires the Main Contractor to be appointed by way of the Pre Construction Services Agreement ahead of RIBA Stage 4 design commencing. The critical path does not accommodate delay to RIBA 4 whilst approvals are pursued via the non-delegated route.

8. Multi Disciplinary Design Team – Appointment

- 8.1 The formal appointment of the Multi- Disciplinary Design Team is close to being finalised. This covers aspects of both Phase 1 and Phase 2 of the development, albeit there will be separate appointments for each phase.
- 8.2 The appointment covers the following services:

- RIBA Stage 3 Design associated with preparing a Detailed Planning Application for Phase 1 and an Outline Planning Application for Phase 2.
- RIBA Stage 4 Technical Design for Phase 1. This will run alongside the Pre-Construction Services Agreement with the Main Works Contractor.
- RIBA Stage 5 Construction drawings for Phase 1. This element of the appointment will be novated to the selected Main Contractor.

9. Asset Protection Agreements with Network Rail or other Bodies

- 9.1 The Ebury Bridge Estate borders Network Rail infrastructure. Depending on the detailed requirements of demolition and construction it may either be mandatory or, alternatively, desirable for the Council to enter into one or more Asset Protection Agreements (“APA”) with Network Rail.
- 9.2 Network Rail's standard Basic APA (“BAPA”) would require the Council to comply with certain obligations for works which could impact on the rail infrastructure. It would also require the Council to provide an unlimited indemnity to Network Rail if the Council's works damaged the rail infrastructure
- 9.3 It should be noted that this agreement is not subject to procurement. It is intended to govern the inter-relationship between the Council's works and Network Rail's infrastructure.
- 9.4 As well as Network Rail, it may become necessary for the Council to enter into other Asset Protection Agreements with the likes of Thames Water for example.
- 9.5 To mitigate potential programme delay, this Paper is seeking the Cabinet Member’s approval to delegate authority to the Executive Director of Growth, Planning and Housing in consultation with the Director of Finance to agree, enter into and execute any required Basic Asset Protection Agreement or Asset Protection Agreement.

10. Background

- 10.1 The background and policy context to this report is unchanged from that described within the Cabinet Member Report of 13 March 2019.

11. Financial Implications

- 11.1 Ebury Bridge has a Capital budget to self-deliver phase 1 of the scheme and for phase 2 to be delivered in conjunction with a developer or other partner.

11.2 The detailed budget and cost implications of this report are contained within part B of this report.

12. Legal Implications

Ground 10 proceedings

12.1 Under Section 84 (Part 11, Ground 10) of the Schedule to the Housing Act 1985 the Council must show an intention, within a reasonable time of obtaining possession of the dwelling, either to demolish or reconstruct or do works to the property and that they require vacant possession in order to do so.

12.2 Ground 10 is a discretionary ground for possession and requires the the Council as landlord to (a) factually establish that the grounds can be fulfilled, (b) that suitable alternative accommodation is available and (c) it is reasonable to make a possession order.

12.3 The Council's Ground 10 application is scheduled to be heard by the Court on 20 September 2019.

Phase 1 Demolition

12.4 The Ebury Bridge estate is held by the Council for the purposes of Part II of the Housing Act 1985.

12.5 In Phase 1 the Council proposes to demolish housing accommodation and to construction new housing accommodation on that land. The majority of which will be Council owned socially rented homes. A relatively small number of homes will be reserved for existing leaseholders and some other homes may, subject to a future Council decision, be leased to WHIL (which will be subject to a further WHIL approval). The provision of council accommodation falls within the purposes of Part II of the Housing Act 1985.

12.6 The Phase 1 Demolition contract contains an option for the Council to instruct the demolition contractor to undertake demolition work in some or all of Phase 2. The exercise of any Council option relating to Phase 2 would be subject to a future Cabinet Member decision to authorise this and the relevant expenditure this would entail.

12.7 The Future Ebury Schemes Approval Agreement ("FESAA") does not entail payments for works by the Council to the contractor. It preserves an option for

the Council to request that the D&B contractor undertakes building work for some or all of Phase 2. It also provides a framework for the pricing of any Phase 2 work. The D&B contractor also has the option of declining to undertake Phase 2 works. The exercise of any Council option would be subject to a future Council decision to authorise this and relevant expenditure this would entail.

- 12.8 It is anticipated that following demolition of buildings in Phase 1 it may be necessary to appropriate such vacant land for planning purposes in order to extinguish third party easements and similar rights. This will be subject to an assessment by officers of whether this is required and, if so, further approvals will be required. Following any appropriation for planning purposes it will be necessary to further appropriate the relevant land for the purposes of Part II of the Housing Act 1985 on the basis that the Council intends to develop new housing accommodation.

Meanwhile Use Works contract

- 12.9 The Council has options as to which powers it exercises in awarding the contract
- 12.10 The Council's preference is to account for the relevant land and meanwhile structure within its HRA. This preference is based on the meanwhile use structure's proposed use as primarily an amenity for Ebury Bridge residents together with the short-term life of that structure.
- 12.11 In order to achieve this, it will be necessary to obtain the consent of the Secretary of State under Section 12 and/or Section 15 of the Housing Act 1985. The Ministry of Housing, Communities & Local Government has provided informal feedback that is likely consent will be given.
- 12.12 In the unlikely event the Secretary of State declines to give his consent the Council has the option to appropriate the land to its general fund and provide the facility under its general power (Chapter 1, the Localism Act 2011) or under the Local Authorities (Land) Act 1963. Any such appropriation would result in that land/structure being accounted for in the Council's general fund. It would be possible to further appropriate the land for housing purposes once the Meanwhile Use ceases.

Selection of contractors

- 12.13 The Demolition contractor has been procured under compliant procurement procedures undertaken in accordance with the Public Contracts Regulations 2015 and the Council's Contract Procedure Rules.

12.14 The value of the Meanwhile Use Works contract is significantly below the EU works threshold of £4,551,413. On that basis the Council is not required to undertake a procurement procedure under the Public Contracts Regulations 2015. However, it will undertake a competitive competition to select the contractor and this must comply with the Council's Procurement Code and Regulation 18 of the Public Contracts Regulations (requiring it to treat bidders equally and without discrimination).

12.15 The Multi- Disciplinary Design Team is being directly appointed under an NHS Shared Business Services Framework which is compliant with the Public Contracts Regulations 2015.

Consultation

12.16 The Council has undertaken consultation under Section 105 Housing Act 1985 in relation to the proposed works.

Equalities Duties

12.17 In deciding whether to approve the proposals, Members must comply with the public sector equality duty under Section 149 of the Equality Act 2010 and the assessment commissioned in this regard was included in the Cabinet Member Report dated 13 March 2019. The assessment does not change as a result of the proposals in this Paper

13. Consultation

13.1 The Churchill Ward Councillors received a Briefing Note in respect of the proposals in this Paper. The Briefing Note was dated 14 August 2019.

13.2 A meeting took place to receive feedback on the Briefing Note from the Ward Councillors on 22 August 2019. After explaining all the components of the Briefing Note and the central theme of maintaining Ebury programme momentum the Ward Councillors pronounced themselves satisfied and had no specific comments to raise.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact:

David Thompson, Project Director, Ebury Bridge Renewal Project
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For completion by the **Cabinet Member for Finance, Property and Regeneration**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: **Councillor Rachael Robathan, Cabinet Member for Finance, Property and Regeneration**

State nature of interest if any

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(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendations in the report entitled **Ebury Bridge Estate Renewal - Approval to award Demolition Contract and Delegated Authority to enter into various works Contracts\Agreements** - and reject any alternative options which are referred to but not recommended.

Signed

Councillor Rachael Robathan, Cabinet Member for Finance, Property and Regeneration

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, the Ci Executive Director, Finance and Resources and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account

before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.