



City of Westminster

Cabinet Member Report

Decision Makers:	Cabinet Member for Climate Action, Regeneration and Renters Cabinet Member for Finance and Council Reform
Date:	20 July 2023
Classification:	Part Exempt: Appendix 1 is exempt from publication
Title:	Ebury Bridge Estate Renewal – Supplemental Agreement to the Building Contract with Bouygues (UK) Ltd. Phase 1
Wards Affected:	Knightsbridge & Belgravia
Key Decision:	Yes
Financial Summary:	The value of the Deed of Variation to the original contract is the sum of £3.5 m to be funded from the current HRA Business Plan allocation for Ebury Phase 1
Report of:	Debbie Jackson, Executive Director of Growth, Planning and Housing and Gerald Almeroth, Executive Director of Finance and Resources

1 Executive Summary

- 1.1. This report seeks approval to amend the JCT Design and Build (D&B) Contract entered into between “the Employer”, Westminster City Council (WCC) and “the Contractor”, Bouygues UK Ltd, for the design and construction of 226 new mixed tenure residential dwellings with common areas, office premises and external works as part of the overall redevelopment of Ebury Bridge Estate, Ebury Bridge Road, London SW1W PX.
- 1.2. The variation to the Contract is to be made by way of a Deed of Variation (DoV) to the above mentioned JCT D&B Contract.
- 1.3. This report seeks approval to increase Contract sum for the agreed figure for the Deed of Variation of **£3.5m** which is based on an award of an additional 8.6 weeks to the programme.

2 Recommendations

- 2.1 The Cabinet Member for Climate Action, Regeneration and Renters and the Cabinet Member for Finance and Council Reform are recommended to:
 - Approve the variation to the contract made by way of Deed of variation including increasing the contract sum by £3.5m
 - Approve associated spend of £3.5m as a result of the contract variation.
 - To note work undertaken on overall programme viability to be tabled at Capital Review Group at a future date.
 - Note that the Deed of Variation will result in 8.6 week extension to the Main Works contract with a revised practical completion date of July 2024.

3 Background

- 3.1 On 10 September 2021 Westminster City Council (WCC), “the employer”, and Bouygues (UK) Ltd, “the contractor”, entered into a building contract to carry out the design and construction of 226 residential dwellings with mixed tenure, common areas, office premises and external works as part of the overall redevelopment of Ebury Bridge Estate, Ebury Bridge Road, London SW1W 8PX otherwise known as Phase 1 works, “the Works”.
- 3.2 Following agreeing the Building Contract, further issues have arisen which have been reviewed and negotiated on behalf of WCC by the Council’s Employers Agent Quantity Surveyor, Gardiner and Theobald (GTQS) and covered under Employers Agent Instructions (EAI)s. The Deed of Variation to the Building Contract includes 43 EAI)s, of which 13 have either no cost effect or result in a cost saving to WCC. The costs of the remaining EAI)s can be found in the schedule of changes at Appendix 1, with the larger items summarised below. The combined impact of the 43 EAI)s is a net cost of £3.5m.

3.3 The following items account for a significant proportion of the DoV costs:

- Tenure change following a change in Westminster City Council policies.
- Kitchen manufacturer and specification, change recommended by sales consultant JLL to align with current market values for the Market dwellings.
- Exiting pile removal.
- Ground obstruction removal.
- Additional Party Wall requirements from Network Rail which resulted in a substantial re-design of the building ventilation.
- Provision of a show flat, required for market sales.
- NHBC uplift in fees.
- Total cost including the above within the DoV.
- Value engineering agreed between all parties listed in the attached commercial schedule of changes at Appendix 1.

3.4 The total value of DoV following VE, provisional sum and the commercial adjustment is adjustment will be **£3.5m**.

4 Reasons for Decision

4.1 Entering into the Deed of Variation is required to continue the delivery of Phase 1 of the Ebury Bridge Estate Regeneration in accordance with WCC's policies and commitments to the renewal of the site.

4.2 The DoV closes out a significant amount of commercial items and reflects a fair and reasonable cost to the Council with future risk of both delay and additional cost transferred to the contractor. By transferring these risks Westminster has greater cost certainty and a significantly reduced risk of further claims stemming from instructions issued to date.

4.3 With the transfer of time and cost risk and the cost negotiated, the DoV will provide Westminster greater value and less risk than a protracted negotiation of each instruction and time claims for the items included with in the DoV.

5 Financial Implications

5.1 The Ebury Phase 1 Full Business Case (FBC) was approved by Cabinet in June 2021. The FBC assumed Phase 1 capital expenditure of £169.8m, as detailed in Table 1. Predicated on the construction of 226 homes of which 98 would be for social rent, 28 for intermediate rent and the remaining 100 sold on the open market.

Table 1

<u>FBC Phase 1 Costs - June 2021</u>	
	£
Construction cost (BYUK Contract)	£110.78m
Demolition costs	£5.40m
Other Development Costs	£46.04m
Contingency	£7.58m
Total Development Costs	£169.81m

- 5.2 As noted in section 3 above, following contract agreement with BYUK certain issues have arisen beyond the date of the agreement which have been reviewed and negotiated by the EAQS, Gardiner and Theobald (G&T). The Deed of Variation (DoV) covers all outstanding instructions agreed to date for a fixed price, with any residual risk arising from those instructions held by BYUK.
- 5.3 The DoV increases the BYUK contract by £3.5m £114.26m, up 3% from the original agreed contract (£110.78m). Refer to the schedule of changes at Appendix 1 for the breakdown of the cost movements for the DoV increase in the contract sum.
- 5.4 The Scheme had contingency of £7.58m at FBC. £3.9m of this has been allocated to additional increases to project costs. This leaves balance of £3.7m to support the remaining Phase 1 development costs of £93m (4% cover)
- 5.5 It is proposed the contingency is left at £3.7m and not drawn down fund the DoV payment. Residual risk items under the contract have been minimised over the last 12 months and the structure is now above ground, lessening the risk exposure further. The contingency should be held to cover other potential non-contract risk items.
- 5.6 This additional spend of £3.5m, along with changes to the demolition contract of £2.5m endorsed by CRG in April 2023 will result in an increase to HRA borrowing of £6m. However, further work is being undertaken to reassess the viability of the Ebury programme as a whole and further risks and costs, including a review of the overall scheme contingency. This work will result in further movements to budgets and will be presented back to CRG and the cabinet member at a later date.

6 Legal Implications

- 6.1 The Council has a general power of competence under section 1 of the Localism Act 2011; this is the power to do anything an individual can do, provided it is not prohibited by other legislation.

- 6.2 The Council has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness in respect of best value duty.
- 6.3 The recommendation within this report is seeking approval for WCC to enter into a supplemental agreement to vary the scope of the Works, increase the contract sum and extend the date for practical completion of the works by BYUK resulting from the variation to the scope of the Works.
- 6.4 BYUK was appointed and entered into the Building Contract with WCC to undertake and deliver construction works for the development of Phase 1 of the Ebury Bridge Estate regeneration scheme (the Scheme).
- 6.5 The amendments to the Building Contract which are intended to be covered by the supplemental agreement will have time and costs implications which are dealt with under the terms and conditions of the supplemental agreement. This gives the Council certainty of the costs associated with the Issues and the extension of time granted to BYUK.
- 6.6 The original contract sum awarded to the BYUK by WCC is £110,917,231 (excluding VAT) (the Contract Sum) in respect of the Scheme under the executed Building Contract.
- 6.7 The additional sum due to contract variation is £3,483,007.90 (excluding VAT). The increased sum is less than 10% of the original Contract Sum awarded by WCC.
- 6.8 The variation to the scope of the Works extends the original completion date from 17 May 2024 to 19 July 2024 which is an additional 9 weeks to the programme for the Works.
- 6.9 Subject to business justification, review and endorsement by the Commercial Gateway Review Board, approval of the contract variation is required from the appropriate Cabinet Member in accordance with their Terms of Reference.
- 6.10 The Council must also have regard with compliance of the Public Contracts Regulations 2015 (PCR). Regulation 72 of the PCR sets out the requirements for when a contract may be modified or varied without a new procurement procedure being undertaken.
- 6.11 The body of the report details the reasons why variation and extension to the works for the Scheme are required.

- 6.12 Regulation 72(1) (b) has been considered and the contract variation may be implemented where additional works by the original contractor have become necessary that were not included in the initial procurement and where a change in contractor:
- (i) Cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with the existing works procured and
 - (ii) would cause significant inconvenience or substantial duplication of costs for the Council provided that any increase in price does not exceed 50% of the original Building Contract value.
- 6.13 In light of the contents of the report, the contract variation appears to be compliant with regulation 72(1) (b) of the PCR.
- 6.14 External solicitors, Trowers and Hamlins LLP who drafted and prepared the Building Contract has been instructed to draft the supplemental agreement for execution.

7 Carbon Impact

- 7.1 The Ebury Bridge Estate development is a high performing sustainable development that utilises ground and air source heat pumps for the generation of all heating and cooling in the development. In addition, it provides infrastructure for electric car charging across all car parking provision in accordance with statutory requirements. The development is a low car development due to its proximity to public transport and connectivity. Although the development pays a small carbon offset payment, the development is far more carbon efficient than the current estate and sees this benefit materialise in Year 12.

8 Equalities Impact

- 8.1 WCC reviews and updates the relevant sections of the independent Equality Impact Assessment (EQIA) at key milestones during the project and a copy of the current EQIA is at Appendix 2.
- 8.2 WCC requires all partners, professional advisors, and contractors to align with WCC's equality duties and the requirements stipulated in the Considerate Contractors Scheme. The Considerate Contractors Scheme has made inclusivity a key objective and is actively requiring participants to recruit from under-represented groups.

9 Consultation

- 9.1 The consultation with Ebury Bridge Estate residents continues to be delivered consistently by the on-site community engagement team who have been based at the Ebury Bridge Estate since July 2017. The commitment of WCC to work with residents on key decisions throughout the project led to the establishment of the Ebury Bridge Community Partnership Group (CPG), formally the Community Futures Group (CFG). The CPG is the resident led steering group and the top tier of the Ebury Bridge engagement structure. This means that the residents have continued to play a key role in all strategic decisions and were consulted on the proposed tenure distribution options.
- 9.2 Ward members were supportive of the progress made on the construction of Phase 1 of the scheme and resident liaison carried out by the main contractor. It was noted that there have been no resident concerns raised with ward councillors in relation to construction work.

If you have any queries about this Report or wish to discuss further, please contact:

Setareh Neshati sneshati@westminster.gov.uk or 07966 167491

APPENDICES


Appendix 1 - Schedule of Changes dated 14/04/23 – Exempt from publication

Appendix 2 - EQIA

For completion by the **Cabinet Member for Climate Action, Regeneration and Renters**

Declaration of Interest


I have no interest to declare in respect of this report

Signed:  Date: 20 July 2023
NAME: **Councillor Matt Noble**

State nature of interest if any:

(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 recommendation(s) in the report entitled **Ebury Bridge Estate Renewal – Supplemental Agreement to the Building Contract with Bouygues (UK) Ltd. Phase 1** and reject any alternative options which are referred to but not recommended.

Signed: 
Cabinet Member for Climate Action, Regeneration and Renters

Date: 20 July 2023

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:

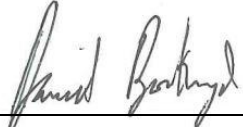
If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can 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.

For completion by the **Cabinet Member for Finance and Council Reform**

Declaration of Interest

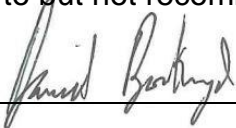
I have no interest to declare in respect of this report

Signed:  Date: 20 July 2023
NAME: **Councillor David Boothroyd**

State nature of interest if any:

(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 recommendation(s) in the report entitled **Ebury Bridge Estate Renewal – Supplemental Agreement to the Building Contract with Bouygues (UK) Ltd. Phase 1** and reject any alternative options which are referred to but not recommended.

Signed: 

Cabinet Member for Finance and Council Reform

Date: 20 July 2023

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