



City of Westminster Cabinet Member Report

Meeting or Decision Maker: Cabinet Member for Climate Action, Regeneration and Renters & Cabinet Member for Finance and Council Reform

Date: 13 September 2023

Classification: General release except for Appendix A, B & C which are exempt from disclosure as (i) it contains information relating to the financial or business affairs of a particular person (including the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972, (ii) it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under paragraph 5 of Schedule 12A of the Local Government Act 1972; (iii) and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Title: Ashbridge, Ashmill & Cosway sites - settlement of the main construction contract final account with Geoffrey Osborne Limited.

Wards Affected: Church Street

Policy Context: The proposed development will collectively help to contribute to Westminster City Council's (WCC) commitments to a Fairer Westminster, specifically: Fairer Housing (Greener Affordable Housing to support the needs of residents and social care users). Fairer Environment (low energy targets that will help contribute towards Westminster becoming Carbon Neutral by 2030),

Key Decision: Yes – Significant expenditure

Financial Summary: The approved budget for the scheme within the HRA Business Plan is £77.224m (net £8.223m).

Total scheme costs are £81.29m (net £12.570m).

The remaining £4.347m will be funded from the Affordable Housing Fund.

Spend approval of £8.8m is required to bring the scheme to completion.

Report of:

Debbie Jackson, Executive Director of Regeneration, Economy and Planning.

1. Executive Summary

- 1.1. As part of the Housing and Regeneration Development Programme, within the Housing Revenue Account (HRA), Westminster City Council (WCC) are seeking to obtain Cabinet Member approval to agree the final account under the construction contract with Geoffrey Osborne Limited (Osborne) in relation to the Ashbridge, Ashmill and Cosway (AAC) sites.

2. Recommendations

- 2.1. That the Cabinet Member for Finance and Council Reform and the Cabinet Member for Climate Action Regeneration and Renters in consultation with the Cabinet Member for Housing Services:
 - 2.1.1 Approves the additional £7,760,002 variance sum to the signed construction contract between the Council and Geoffrey Osborne Limited. The interim final account for the works delivered and agreed with the contractor amount to £51,250,000 (excluding VAT).
 - 2.1.2 Approve additional spend of £8.8m against the previously approved spend set out in the FBC to complete the scheme.
 - 2.1.3 Note the increase in budget requirement of £4.347m above existing provision which will be funded from the Affordable Housing Fund.

3. Reasons for Decision

- 3.1 The project is approaching the practical completion stage and under the construction contract, a final account statement is required to be agreed and signed between the Council and Osborne.
- 3.2 The original Cabinet Member Decision was published on 16 October 2020. The approved contract award value for Osborne was £43,489,998. Throughout the course of the project, several changes have been instructed across the 3 sites. As a result, a further CMR was approved in February 2022 setting out the revised energy strategy and the budget provision for the project was revised through the budget setting process in summer 2022. There have been further loss and expense claims submitted by the contractor. The Council and Osborne have now agreed the interim final account statement under the contract. The proposed interim final account now stands at £51,250,000 this represents an increased variance of £7,760,002 against the original contract sum awarded by the Council.

4. Background, including Policy Context

- 4.1. In 2018, as part of Westminster City Council's strategy to increase affordable housing, the Council achieved planning consent for 77 homes across three interlinked sites called Ashbridge (26 affordable), Ashmill (2 affordable) and Cosway (49 private) collectively known as the AAC sites. All three sites are situated within the Church Street Ward and are held within the Council's Housing Revenue Account (HRA). Ashmill was handed over on 24/02/2023, Ashbridge was handed over on 23/06/2023, and Cosway will be handed over during the first week of September 2023.
- 4.2. A JCT Design and Build contract was signed between the Council and Osborne on 21 January 2021. The contract sum stated within the contract is £43,489,998 as approved by the Council.
- 4.3. As the project has progressed, several contract instructions have been issued to Osborne which have contributed to the cost increase of the works to be undertaken by an additional amount of £3,844,190. Key changes which have significant financial implications include:
- Following government guidelines on carbon reduction standards (The Future Home Standard 2025 - Part L 2021), a change to the energy strategy from gas to air source heat pumps to Ashbridge and Ashmill (Approved via a CMR on 18/02/2022).
 - Party wall awards and works required to close the gap between two adjacent buildings and associated disruption cost.
 - Changes to the sales specification of the Cosway apartments to align the finishes and fittings being provided with market expectations to maintain and increase the sales value of return due to changes in market requirements.
 - Covid prolongation cost.
- 4.4. Under the contract, Osborne have also submitted loss and expense claims which have also contributed to the cost increase further by the additional sum of £3,915,811. Loss and expense claim items include the following:
- Extension of time cost in relation to party wall works to Ashbridge due to the time taken to agree the award.
 - Extension of time cost in relation to the removal of the BT foundation obstructions to Ashbridge which was discovered during the course of the excavation works and the requirement for a Party Wall award to be agreed prior to its removal.
 - Cost associated with EWS1 compliance (external wall system fire review certificate). This was a new requirement necessary to meet the mortgage lenders requirement to obtain a mortgage on the property and was introduced after the contract had commenced on site.

4.5. A Value for Money Statement has been prepared by the Council's cost consultant (Currie & Brown) which supports the £51,250,000 interim final account statement. A copy of this can be found within Appendix B.

4.6. The proposed development will collectively help to contribute to Westminster City Council's (WCC) commitments to a Fairer Westminster, specifically: Fairer Housing (Greener Affordable Housing to support the needs of residents and social care users). Fairer Environment (low energy targets that will help contribute towards Westminster Council becoming Carbon Neutral by 2030 and a Carbon Neutral City by 2040), Fairer Communities (enable all our communities to share in the economic prosperity of the area, through protecting and enhancing the unique heritage of the neighbourhood) and Fairer Council (demonstrated by engaging residents and local stakeholders in a comprehensive consultation process that pre-contract.

5. Financial Implication

5.1. FBC Position Vs Final Outturn Position

The AAC Full Business Case (FBC) was approved by Cabinet in June 2020. The FBC assumed capital expenditure of £72.53m (excluding finance costs) including a construction contracted sum of £43.49m for Geoffrey Osborne limited. Please see the table below.

AAC Summary of Capital Cost - FBC Position				
	Cosway	Ashbridge	Ashmill	Total
VP Costs	£11.80m	£6.93m		£18.73m
Construction Contract	£29.24m	£13.16m	£1.09m	£43.49m
Other	£7.37m	£2.67m	£0.27m	£10.31m
Total Costs	£48.41m	£22.76m	£1.36m	£72.53m

Please note the above costs include a 5% contingency.

As explained in section 4 above various changes such as energy strategy, private sales strategy, and delays to construction for which the contractor has received an extension of time and costs has led to increase in total capital expenditure to £81.29m which is £8.8m (10%) movement from FBC position.

This £8.8m also incorporates an increase of construction contracted sums to £51.25m for Geoffrey Osborne limited which is a £7.76m (18%) movement from the initial contract award.

AAC Summary of Capital Cost - Completion June 2023

	Cosway	Ashbridge	Ashmill	Total
VP Costs	£11.80m	£6.93m		£18.73m
Construction Contract	£33.17m	£16.68m	£1.39m	£51.25m
Other	£7.89m	£3.03m	£0.39m	£11.31m
Total Costs	£52.86m	£26.64m	£1.79m	£81.29m

5.2. Spend Approvals Required

The scheme had an approval to spend of £72.53m at FBC the last formal governance stage. The actual spend on this scheme to period P5 (August 2023) is £76.68m (94%) against the revised capital costs of £81.29m.

The additional spend approval of £8.8m (Difference between FBC Approval and Revised Capital Outturn) is required to complete the scheme and make the outstanding final payments.

5.3. HRA Business Plan Budget Position

A proportion of this increase of £8.8m as well as additional funding was incorporated into the budget setting process in summer of 2022, with inflationary pressures and a drawdown from central contingency included in the revised budget to partially cover ASHP costs.

The current approved budget in the HRA Business Plan is **£77.224m** (net **£8.223m**). This leaves a shortfall between the Final Outturn cost and the HRA BP Budget of **£4.347m**.

	FBC Approval	HRA BP Budget	Final Outturn
	£'000	£'000	£'000
Exp	72,530	77,224	81,290
Funding	(62,100)	(69,001)	(68,720)
Net	10,430	8,223	12,570
		Budget Gap	4,347

This growth request will form part of the HRA Business Plan update, where overall scheme funding will be reviewed and reallocated where necessary to ensure the Business Plan operates in the most efficient way. Recent analysis undertaken on AHF receipts shows this gap can be covered within projected provisions.

6. Legal Implications

- 6.1. The recommendation made under this report is for the Cabinet Member for Finance and Council Reform in consultation with the Cabinet Member for Climate Action Regeneration and Renters and the Cabinet Member for Housing Services to approve the following:
- a. the total additional sum of £7,760,002 to the original contract award; and
 - b. the overall additional budget spend of £8.76m for completion of the works in respect of the project.
- 6.2. The original contract award was made by the Council to Geoffrey Osborne Limited (the Contractor) with a contract value of £43,489,998. The final statement of account for completion of the works has been provisionally agreed with the contractor for a total amount of £51,250,000.
- 6.3. The additional contract sum seeking approval in this report relates to:
- (i) Contractor's claim for loss and expenses under the contract in the sum of £3,915,811; and
 - (ii) overspend sum regarding the Council's additional instructions to the contractor required for completion of the works in the sum of £3,844,190.
- 6.4. Any modification to the contract value is subject to compliance with the Public Contracts Regulations (PCRs) and the Council shall consider whether the contract variation is permitted under regulation 72 of the PCRs.
- 6.5. The original contract awarded by the Council include provisions for the Contractor to make and submit a claim to the Council for their genuine loss and expenses in respect of the works to be delivered for completion of the project. The contract includes clear, precise, and unequivocal clauses set out under Section 4 'Payments' and more specifically clauses 4.19 to 4.23 which expressly details the process for making a claim. As such, the additional sum of £3,915,811 is a permitted compliant contract variation within the safe harbour of Regulation 72 (1) (a) of the PCRs.
- 6.6. With regards to the Council's instructions to the Contractor for completion of the works pertaining to the portion of the overspend in the sum £3,844,190. Section 4.3 of the report sets out the reasons and rationale for the additional costs. It does not appear that the Council's additional instructions issued to the Contractor is substantial in nature to amount to a breach of regulation 72 and the Council can argue that this contract variation is compliant and fall within Regulation 72 (1) (e) "*where the modifications, irrespective of their value, are not substantial within the meaning of paragraph (8)*", which states:

"(a) the modification renders the contract or the framework agreement materially different in character from the one initially concluded.

- (b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have—*
- (i) allowed for the admission of other candidates than those initially selected,*
 - (ii) allowed for the acceptance of a tender other than that originally accepted, or*
 - (iii) attracted additional participants in the procurement procedure.*
- (c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement.*
- (d) the modification extends the scope of the contract or framework agreement considerably.*
- (e) a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in paragraph (1)(d).”*

6.7. As the original contract value is above £1.5 million, the Council’s Procurement Code state approval is required for a contract variation and/or contract overspend that account for 10% or more of the original contract value. Business justification, review and endorsement by the Commercial Governance Review Board is required. Approval of the contract variation and overspend must then be obtained by the appropriate Cabinet Member in accordance with their Terms of Reference. However, in respect of the recommendation under this report, the decision to approve has been taken by the Executive Director for Growth Planning and Housing due to the delegation of authority granted by the Cabinet Member for Finance, Property and Regeneration in the Cabinet Member Report dated 15 October 2020. We rely on robust construction cost management services provided by our external cost consultants, to monitor the cost of instructions and changes to the final figure. The monthly cost reports produced by the consultants are shared with procurement on a regular basis. In this case, the figures presented by the contractor and design team were vastly different and we had to try and achieve some sort of agreement before the actual cost could be reported. The initial Final Account submitted by the contractor was approximately £57,500,000, which was negotiated and agreed at £51,250,000. Development services and procurement will use these reports to assess whether the 10% threshold level has been breached.

7. Carbon Impact

7.1. The council has committed to achieve net zero carbon emissions from operations by 2030 and across the city by 2040.

- 7.2. The scheme aligns with Westminster's City Plan - objective 7 which outlines WCC's commitment to reduce carbon by minimising detrimental impacts from developments. Policy 36 outlines the council's aim of promoting net zero developments and the means for doing so.
- 7.3. On 18 February 2022, a Cabinet Member Report entitled 'Sustainable Heating Systems (AAC sites) was approved. This authorised a change from traditional gas heating systems to a more sustainable air source heat pump heating solution in relation to the 28 homes at the Ashbridge and Ashmill sites.

8. Equalities Impact

- 8.1. As a public sector organisation, the Council has a duty under the Equality Act 2010 and the associated Public Sector Equality Duty (PSED) to ensure that the proposals do not lead to unlawful discrimination (direct and indirect), and that they advance equality of opportunity and foster good relations between those with a protected characteristic and all others. An EIA is often used by public sector organisations to demonstrate how this duty has been discharged. It is the Council's policy that EIAs are undertaken and updated for projects throughout their development.
- 8.2. The AAC project will contribute to improvements for the church street ward through new affordable housing, new employment opportunities associated with the construction, new landscaping, and green spaces.

9. Consultation

- 9.1. The Church Street Ward Councillors have had 7 days on which to comment on the recommendations of this report and offered a meeting if requested. The Church Street Ward Councillors received a briefing note on 30 August 2023 and have not made any further comments.

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

Maurice Vieceli, Quantity Surveyor – Growth Planning & Housing.

mvieceli@westminster.gov.uk

APPENDICES

Appendix A: Agreed Final Account Breakdown - Exempt from publication


Appendix B: Final Account – Value for Money Statement - Exempt from publication

Appendix C: Agreed Final Account Context – Exempt from publication

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: 13 September 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 **Ashbridge, Ashmill & Cosway sites - settlement of the main construction contract final account with Geoffrey Osborne Limited.**

Signed: 
Cabinet Member for Climate Action, Regeneration and Renters

Date: 13 September 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.

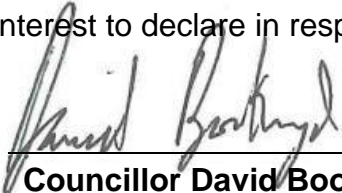
Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee 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: 13 September 2023

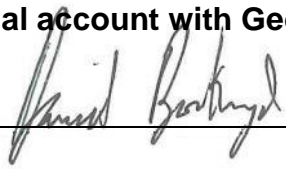
NAME: **Councillor David Boothroyd**

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 **Ashbridge, Ashmill & Cosway sites - settlement of the main construction contract final account with Geoffrey Osborne Limited.**

Signed:



Cabinet Member for Finance and Council Reform

Date: 13 September 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.

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