



City of Westminster

Cabinet Member Report

Meeting or Decision Maker:	Cabinet Member for Climate Action, Regeneration and Renters
Date:	20 October 2023
Classification:	General release except for Appendices A and B which are exempt from disclosure as (i) they contain 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) they contain 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:	Lisson Arches Development - settlement of the main construction contract final account with United Living (South) 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:	<p>The approved budget for the scheme within the HRA Business Plan is £43.89m (net £18.04m).</p> <p>Total scheme costs are £47.2m (net £21.35m). The remaining £3.31m will be funded from the Affordable Housing Fund.</p> <p>Spend approval of £3.3m is required to bring the scheme to completion.</p>
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) is seeking to obtain Cabinet Member approval to agree the final account under the construction contract with United Living (South) Limited (ULS) in relation to the Lisson Arches development.

2. Recommendations

- 2.1. That the Cabinet Member for Climate Action Regeneration and Renters in consultation with the Cabinet Member for Finance and Council Reform and the Cabinet Member for Housing Services:
 - Approves the additional £3,203,958 variance spend to the original signed construction contract so the final account to be agreed between the Council and ULS for the works delivered shall be £27,801,133.
 - Note the increase in budget of £3.3m will be funded from the Affordable Housing Fund receipts.

3. Reasons for Decision

- 3.1. The project is approaching the practical completion stage and under the construction contract, a final account agreement is required between the WCC and ULS.
- 3.2. The original Cabinet Member Statement of decision was published on 8th March 2021. Throughout the course of the project, a number of changes have been instructed under the contract. There have also been loss & expense claims submitted by the contractor. WCC and ULS have now come to a commercial agreement with regards to the final account. The proposed final account now stands at £27,801,133 this represents a variance of £3,203,958 against the original contract sum approved and awarded by the Council.

4. Background, including Policy Context

- 4.1. The Lisson Arches development is a scheme located within the Church Street regeneration area. The new building will provide Community Supportive Housing to HAPPI standards and a new Enterprise Space. The residential element will be designed to dementia-friendly design standards. A total of 59 community supported housing units will be delivered along with a scheme manager unit and an enterprise space of circa 1,350m².
- 4.2. The building is due to be handed over by August 2023, with the public realm and highway works due to be completed by December 2023.

- 4.3. A JCT Design and Build contract was signed between WCC and ULS on 20th January 2021. The contract sum stated within the contract is £24,597,175.
- 4.4. As the project has progressed, a number of contract instructions have been issued to ULS which have contributed to the cost increase. Key changes which have significant financial implications include:
- Change to the enterprise space ventilation strategy.
 - Scaffold adaptations for the culvert.
 - Kitchen layout changes.
 - Secure by design changes as requested by the secure by design officer.
 - Installations to curtains to all windows.
 - Change to the highways and external landscaping scope as instructed by WCC highways.
- 4.5. Under the contract, ULS have also submitted loss and expense claims which have also contributed to the cost increase. Loss and expense claim items include the following:
- Discharge of brickwork planning conditions.
 - Delay in relation to culvert works.
 - Sub-station Wayleave Approval and Water Ingress.
 - Changes requested by the secure by design officer.
- 4.6. A Value for Money Statement has been prepared by the cost consultant (Currie & Brown) which supports the £27,801,133 final account agreement. A copy of this can be found within Appendix B.
- 4.7. As the proposed final account value is greater than 10% of the original contract value at 13%, Commercial Gateway Review Board (CGRB) approval will also be sought under the council's procurement regulations.
- 4.8. The proposed development will collectively help to contribute to Westminster City Council's (WCC) commitments to a Fairer Westminster, specifically: Fairer Housing (Greener Affordable Community Supported Housing to support the needs of residents), Fairer Environment (low energy targets that will help contribute towards Westminster becoming Carbon Neutral by 2030), 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 Implications

The Full Business Case (FBC) was approved by Cabinet in December 2021. The FBC assumed capital expenditure of £43.4m including a construction contracted sum of £24.6m for United Living.

As explained in the Section 4.4 above during the contract period various variations to the contract have been issued which has resulted in additional costs of £3.2m. This takes the revised contract value to £27.8m (13% increase from original contract value).

The current approved budget in the HRA Business Plan is £43.9m (net £18m). This leaves an expected shortfall of £3.3m (7.5% increase).

	Budget	Forecast	Variance
Total Expenditure	£43.89m	£47.20m	£3.31m
Income	(£25.85m)	(£25.85m)	-
Net Budget	£18.04m	£21.35m	£3.31m

The proposal is to fund this gap of £3.3m using Affordable Housing Fund receipts.

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.

If AHF receipts were not used, additional short-term pressure would be placed on the HRA business plan, leading to a higher level of borrowing in the current financial year.

6. Legal Implications

- 6.1. The report is seeking authority to vary an existing construction contract with United Living (South) Limited (ULS) (the Contractor) in relation to the Lisson Arches development (the Scheme).
- 6.2. The original contract sum awarded to the Contractor by the Council is £24,597,175 (excluding VAT) in respect of the Scheme under the executed Building Contract dated 20th January 2021.
- 6.3. The additional Building Contract sum regarding the contract variation is £3,203,958 (excluding VAT). The increased sum is less than 15% of the original Building Contract sum awarded by the Council.

- 6.4. 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.
- 6.5. The Council must also have regard with compliance of the Public Contracts Regulations 2015 (PCR). Regulation 72(5) of the PCR2015 allows for modification of contracts during their term without a new procurement procedure being required, where the value of the modification is below the relevant threshold and less than 15% of the initial contract value (in the case of contracts for works).
- 6.6. The body of the report details the reasons why modification for the Scheme is required. The variation is required to fund costs for enabling works, utilities redirection and support to the existing highway/bridge to open the site for development (as well as rising costs due to uncontrolled variables in the market).
- 6.7. The proposed value of modification is less than 15% of the initial contract value, and it is below the relevant threshold for works.
- 6.8. Nevertheless, for the modification to be permitted by regulation 72(5), the overall nature of the contract must remain unaltered.
- 6.9. Changes in the scope of services required, changes in the contract charges/rates, changes in resources required to perform the contract, and/or clarification of issues which the original contract has not adequately dealt with, will normally not be considered as a modification to the overall nature of the contract.
- 6.10. The proposed modification is therefore lawful and consistent with both the Council's Procurement Code and regulation 72 Public Contracts Regulations 2015.
- 6.11. According to par. 2.28.7 of the Council's Procurement Code, all Deeds of Variation and Variation Orders (building and civil engineering contracts) should be kept with the original contract in the Deeds Registry.
- 6.12. Once agreed all variations on contracts valued at £30,000 or more should be entered on the Contracts Register.
- 6.13. Legal Services advice should be sought to draft the contract Deed of Variation.

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. As part of the project's energy strategy, air source heat pumps and PVs will be installed to the development which aligns with Westminster's City Plan.

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 Lisson Arches 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 onand 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:

Setareh Neshati – Head of Development.

sneshati@westminster.gov.uk

APPENDICES

Appendix A: Agreed Final Account Breakdown* - Not for publication.

Appendix B: Final Account – Value for Money Statement* - Not for 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: 20 October 2023

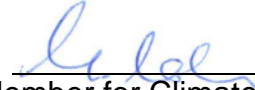
NAME: **Councillor Matt Noble**

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

Lisson Arches Development – settlement of the main construction contract final account with United Living (South) Limited

Signed: 
Cabinet Member for Climate Action, Regeneration and Renters

Date: 20 October 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.