



City of Westminster

## Cabinet Member Report

**Attention of:** Cabinet Member for Communities and Regeneration

**Date:** 15 September 2021

**Classification:** General Release but that Appendix A be declared as exempt from publication as it involves the disclosure of information as prescribed by paragraph 3 of Part 1 of Schedule 12a to 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) as per paragraph 3.1 below.

**Title:** Luxborough Street Development, London, W1U

**Wards Affected:** Marylebone High Street Ward

**City for All:** The proposed developments will collectively help to contribute to Westminster's City for All objectives. A City that Celebrates its communities by supporting the development of a more inclusive community. A City of Opportunity by providing more homes of all types and tenures to create a vibrant community with improved opportunities through the range of housing provided in particular through the provision of affordable housing. A Healthier and Greener City through creating high quality homes and a healthier, greener environment that connects better to surrounding communities.

**Key Decision:** Yes

**Financial Summary:**

The Full Business Case sets out the updated costs and income for the scheme and shows that overall there is an increased net expenditure requirement as compared to that set out in the Outline Business Case. This increased net cost will need to be reflected in the updated Capital Strategy for 22/23 onwards.

**Report of:**

Debbie Jackson – Executive Director of Growth, Planning & Housing

## **1. Executive Summary**

- 1.1. This scheme consists of the redevelopment of the existing kick about space on Luxborough Street to provide 14, affordable housing units as well as commercial D1 space on the ground floor. It also includes landscaping improvement works to the gardens of Luxborough Tower.
- 1.2. The scheme will redevelop an underutilised site into a new housing development, helping to provide much needed affordable housing for Westminster.
- 1.3. The Full Business Case (FBC) demonstrates that whilst there have been some changes to the capital and revenue positions on the project since the OBC, the redevelopment of the site is the most suitable option for the Council to deliver.
- 1.4. This Paper seeks formal agreement to the preferred way forward as set out in the Full Business Case, namely;
  - A development of 14 affordable Homes for Intermediate Rent together with commercial space at the ground floor and landscaping works to Luxborough Tower.
  - The direct development of the site by the council
  - The appointment of Wates Construction Ltd as Main Contractor to deliver the construction works.

## **2. Background**

- 2.1. The Luxborough Street kick about site is located in the Marylebone High Street Ward on the western side of Luxborough Street, between Marylebone Road to the north and Paddington Street to the south. The site is a short walk to Marylebone High Street, a busy retail/commercial centre with a variety of local amenities. The site is bounded by Newcastle House to the south, Luxborough Tower to the north and the public open space of Paddington Street Gardens to the west. The existing kick about site was developed as part of Luxborough Tower in the early 1970s to provide outdoor play space for residents. The site is owned by Westminster City Council and is included as amenity space in the leases of some of the Luxborough Tower residents. Originally, the site was for the sole use of the Luxborough Tower residents however, there is a history of it being used informally by the wider community.
- 2.2. In 2019, the Cabinet Member for Finance, Property and Regeneration approved the development of the Luxborough Street 'kick about' site to provide a ground floor community use with 14 fully affordable residential units above in the form of intermediate rent.
- 2.3. An Outline Business Case (OBC) was approved by the Cabinet Member in November 2019.

- 2.4. Planning Permission was granted for the landscaping improvement works in Nov 2019 and for the redevelopment of the kick about space in October 2020.
- 2.5. Wates Ltd were appointed in October 2020 through a Pre-Construction Services Agreement which includes the completion of the scheme design, additional surveys, services diversions and agreement of a fixed contract sum for the scheme.

### **3. Recommendations**

3.1. That Appendix A of the report be exempt from disclosure as it involves the disclosure of information as prescribed by paragraph 3 of Part 1 of Schedule 12a to the Local Government Act 1972, (as amended), in that they contain information relating to the financial or business affairs of any particular person (including the authority).

3.2. That the Cabinet Member approves the following:

3.2.1. The preferred way forward as set out in the Full Business Case, namely;

- A development of 14 affordable Homes for Intermediate Rent together with commercial space at the ground floor, together with Landscaping works to Luxborough Tower
- The direct development of the site by the council
- The appointment of Wates Construction Ltd (Wates) as Main Contractor to deliver the construction works

3.2.2. To approve the balance of capital expenditure totalling £10.038m required to deliver the project as set out in paragraph 9.4.

3.2.3. The execution of the Building Contract between the Council and Wates as Main Contractor to deliver the construction works as referred to in the Legal Implications in Appendix A.

3.2.4. To pay £311k into the Security for Expenses Escrow Account as required under the Party Wall Act, as referred to in Appendix A and that any draw down against this sum is allocated to central contingency

### **4. Reasons for the Decision**

- 4.1. The Council is satisfied that the scheme will contribute towards meeting the City for All objectives, in particular Greener and Cleaner, Vibrant Communities and Civic Leadership and Responsibility.
- 4.2. The Council's City For All objectives set a commitment to deliver 1,850 Affordable homes by 2023.
- 4.3. The proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social

or environmental well-being of the whole, or any part, of their area (section 226(1)(a) and (1A), TCPA 1990).

- 4.4. The Full Business Case represents the final business case stage in the project and reconfirms that project remains the most suitable option for the Council to deliver
- 4.5. The Full Business Case has shown that there is still a strong strategic, economic, commercial, financial and management case for the project to progress to the delivery phase.
- 4.6. Wates have now completed the detailed design and a rigorous open book tendering exercise has been undertaken and overseen by the Council's appointed Cost Consultant (Aurora Cost Consultancy). Aurora have confirmed that the Contract Sum for the main works represents reasonable value for money.
- 4.7. Having previously recommended the approval of Wates for the pre-construction services agreement in October 2020 following an OJEU compliant tender process, the Commercial Gate Review Panel also recommended on 14 September 2021 the award of the main construction works contract to Wates, subject to Cabinet Member approval
- 4.8. The main construction works are scheduled to commence in October 2021

## 5. Summary of Full Business Case

### Strategic Case

- 5.1. The proposed development on Luxborough Street support Westminster's ambitions to support affordable housing targets in Marylebone. The preferred option is comprised of a new build that will provide 14 affordable housing units and a new nursery, of which all will be intermediate housing of mixed tenure. There will be significant improvements and landscaping works to the entrance and area surrounding Luxborough Tower.
- 5.2. The proposed scheme at Luxborough Street comprises the following accommodation set out in the table below

Dwelling Type	Number of Units	Person occupancy level	Gross Internal floor area (m <sup>2</sup> )
One bedroom	7	2	51-55
Two bedrooms	2	3	61
Two bedrooms	5	4	73-81
Total	14	-	-

### Economic Case

- 5.3. The economic appraisal of the preferred Option has been carried out in line with the HM Treasury Green Book (2020) and the HM Treasury Guide to Developing the Project Business Case (2018). In accordance with this guidance, the Economic Case focuses on public value from the perspective of society and considers, as far as possible, all social, economic and environmental costs and benefits.
- 5.4. As part of the economic case, an optioneering appraisal originated at the OBC stage has been reviewed in this FBC. This is to ensure that the value for money of the preferred option remains the best option for the Luxborough Street site and the wider community. After following due diligence, this was still the case, and therefore was appraised as part of the economic case.

### **Financial Case**

- 5.5. The Financial case illustrates the capital and revenue costs of the preferred option and how these will be funded. It includes discussion of the following:-
  - Existing Budget allocation for the project
  - Capital cost of the preferred option
  - How the capital cost will be funded
  - Revenue implications of the preferred option
- 5.6. The Financial Case concludes that the scheme should be moved forward for further development, with the disposal of the intermediate units to WHIL. The overall revenue impact of the scheme on the general fund will depend on the ongoing revenue income that can be achieved through the ground floor commercial space which will remain with the council. The Council will seek to maximise that income stream to minimise any ongoing revenue impact.

### **Commercial Case**

- 5.7. In terms of procurement, through completion of stage 1 procurement, Wates has been successfully appointed and they have delivered according to the pre-construction services agreement (PCSA) agreement. The Luxborough scheme is now at a position where it is seeking approval to proceed to the second stage 2 of the Design and Build contract. The procurement strategy was endorsed at Commercial Gateway Review Board (CGRB), in line with the Council's Procurement Code. The strategy was approved by the Executive Director of Growth, Planning and Housing (delegated approval) on 22 October 2020.
- 5.8. Wates were selected as the preferred provider based upon their reputation in the sector, their working relationship with the Council, and their track record of delivering high quality schemes in a cost-effective manner. The tender pack based on the Employers Requirements and RIBA Stage 4 design was published via the Council's e-tendering portal on 13 August 2020. The PCSA commenced in October 2020.
- 5.9. A Contract Sum has been agreed with Wates which includes the Pre-Contract Services Agreement and landscaping improvement works to Luxborough

Tower. The proposed contract price envisages a start on site for the main works in October 2021. The Contract Sum has been confirmed as being reasonable value for money by the Council's Cost Consultants.

- 5.10. Martin Arnold have been appointed to provide Employers Agent and Quality Control Inspector services. Aurora Construction Consultancy are providing Cost Consultancy services. The Council will also be appointing a mechanical and electrical consultant to monitor the mechanical and electrical installation and commissioning. The scheme will be managed internally by the Councils Development team.
- 5.11. The current assumption within the business case is that the commercial space on the ground floor of the development will be used as a nursery. In that event, WCC Children's Services will identify a nursery operator, on an internal repair lease. Children's Services have experience of letting nurseries and they have the expertise to identify and negotiate with an operator to deliver the appropriate service requirements.

### **Management Case**

- 5.12. The completed Luxborough Street scheme will be managed in two ways, through the housing management framework for the residential elements, and Corporate Property will be responsible for the remainder of the non-residential commercial space. The Council is procuring a framework for estate and tenancy management for all its mixed tenure residential developments. The 14 Intermediate Rent units will have a predetermined route to market, via Westminster's Intermediate Rent Homeownership team. The Commercial D1 space will be managed by Corporate Property.
- 5.13. The procurement strategy for all services will ensure that suppliers with the required skills and experience to deliver this project successfully will be engaged, whilst enabling competition to provide an economically advantageous tender. Following procurement, project governance will be split between development and operation teams, with collaborative working emphasised between the two teams.
- 5.14. The delivery of the development will be led by the Councils Development Team through their established structure. This structure will ensure a blend of senior management and experienced individuals are involved in the delivery of the development throughout.

### **6. Party Wall Matters**

- 6.1. Due to the proximity of the proposed development to Newcastle House, the council was required to serve notices on the freeholder and those leaseholders with flats adjacent to the development site.
- 6.2. Notices were first served on 05<sup>th</sup> July 2019. These expired in July 2020 and party wall matters were put hold until planning consent for the development was granted in October 2020. Following planning consent, new Notices were issued

with the exception of Newcastle House Freehold, who were willing to continue the process based on the existing Notice that had been served .

- 6.3. Additional Notices were issued to flats 9 and 12 in February 21 in respect of the existing boiler flues that over sail the development. These are required to be removed to facilitate the works.
- 6.4. The intention of the programme is to complete draft Party Wall Award negotiations by 1 October 2021, with a view that the agreed Awards are issued by 15 October 2021.
- 6.5. The Awards in respect of the existing boiler flues are not critical to the works starting on site and these will therefore be issued in due course once all matters are agreed.

## **7. Rights of Light**

- 7.1. The Council have instructed a specialist Rights of Light surveyor to undertake due diligence on where negotiations were left with various residents on the 2014 scheme in addition to any new negotiations. The Council recognises that in respect of third-party rights of light which exist and to which an entitlement is proved, should the land be appropriated for planning purposes then the Council will be liable to pay statutory compensation at the very least and so will pursue a settlement strategy to ensure that any claimants receive adequate compensation.

## **8. Westminster Housing Investments Limited (WHIL)**

- 8.1. The Board of the WHIL has agreed in principle to the acquisition of the intermediate rent units in Luxborough Street subject to the commercial and financial arrangements described in Appendix 1. The purchase of the intermediate rent units meets the WHIL business plan objectives as it facilitates and supports a Council led development solution for Luxborough. It also enables the long-term ownership within the Council's group.
- 8.2. Once the units are nearing completion in Q1 2023/24, a red book valuation will be commissioned by the Council that will determine the final acquisition value of the units and further approval will be sought from WHIL for the acquisition with full legal and financial arrangements. A further Cabinet Member report will then request approval to dispose of the units to WHIL and any financial support required by the company to finance the acquisition.

## **9. Financial implications**

- 9.1. The scheme is being delivered within the General Fund and expenditure incurred to date on the scheme totals £2.381m (up to period 4 2021/22).
- 9.2. The FBC sets out the updated costs of the scheme totalling £12.641m as set out in the table below.



Net Capital Cost	Option 2 £'000
Construction Cost	9,006
Other Development Costs	2,935
Contingency	478
Finance Costs	222
<b>Total Development Costs</b>	<b>12,641</b>

9.3. Some key points to note are as follows:

- The construction costs are based on the agreed contract sum with Wates.
- Included in the construction costs is the sum of £0.786m for the landscaping of Luxborough Tower Gardens, £0.100m for s278 works and £0.271m for utility diversion.
- The professional and other developments costs are provided by the WCC Development and PMO team. The cost was increased by £1.1213m from capital OBC to FBC.
- The costs include contingency of 5% of the total outstanding forecast costs.
- Finance costs during the development are included to reflect the full cost of the project to the Council.

9.4. This report recommends that the Council now proceeds with the scheme appointing Wates as the main contractor to deliver the construction works. In order to proceed with the completion of the scheme, the council will need to approve that the balance of expenditure on the scheme of £10.038m can be incurred as shown below.

	£'000
Total Scheme Cost	12,641
Less finance costs	(222)
Total Scheme costs excl financing	12,419
Less: Spend to date (as at P4)	(2,381)
<b>Remaining Expenditure for scheme</b>	<b>10,038</b>

9.5. Once the scheme is nearing completion a further report will be brought to Cabinet Member for decision to dispose of the intermediate units to WHIL and provide any financial support required to support the acquisition.

9.6. The report requests that a sum is made available for the general fund central contingency for the provision of a security sum against which claims from adjoining owners on Party Wall matters can be settled. An arrangement has been put in place with Security for Expenses Ltd Escrow Agent to hold a total sum of £311,500 for these matters. Once the scheme is complete and assuming no claims have been made, the sum will be returned to the central contingency budget. The risk of drawdown has been assessed as low given the

implementation of a thorough and diligent process undertaken by the Council and its Agents in agreeing the Awards. This includes the appointment of a competent contractor, a Checking Engineer to review the contractor's method statements and the appointment of an Acoustics consultant to determine the acoustic strategy to be included in the Awards.

## **10. Legal Implications**

### Contract Award

- 10.1. The Council has awarded a contract to Wates for the purposes of pre-construction services. Subject to there being an agreement between the Council and Wates, a main works agreement will be awarded to Wates.
- 10.2. The Framework Agreement allows the parties to use, JCT, NEC3 and 4, PPC 2000, TAC-1 or SBCC form of contracts. The Council and Wates have opted for JCT, Design and Build 2016 with amendments. The pre-construction services agreement (PCSA) is also in the form of JCT.
- 10.3. The current position is that the Council is undertaking the delivery of the project in its own right as a developer. This option means that the Council becomes a party to the construction contracts. The procurement of construction contracts where value exceeds £4,733,252 must be undertaken in accordance with the requirements of Public Contracts Regulations 2015 (PCR 2015). This obligation applies to both the procurement of pre-construction services and the main works contracts. Such a procurement can be undertaken through an existing and lawfully procured framework agreement.
- 10.4. In this case, the Council has procured the pre-construction services through Crown Commercial Services (CCS) (RM6088 Construction Works and Associated Services) (the Framework Agreement). This Framework Agreement has been procured by CCS and allows other contracting authorities to call off it. The Council is listed on the OJEU Notice, 2019/025-054274 as one of the authorities that can lawfully use the Framework Agreement. The process and procedure for awarding contracts is elaborately set out in Schedule 4 to the Framework Agreement. Adopting the approach set out in Schedule 4 will ensure full compliance with PCR 2015. The decision to award contract valued in excess of £1,500,000 is a key decision therefore, requiring, Cabinet Member approval.
- 10.5. Where the Council were to consider delivery through any of its owned companies such as Westminster Build (WB), the construction contracts between the Council and Wates can be novated to such entity. This will however require a form of agreement between the Council and the delivery entity to cover, matters such as, financing, assets, and delivery of the project generally. When considering delivering through a third-party entity such as Westminster Builds, detailed legal advice will need to be taken on the structure, governance, scope, and objectives. This option is likely to constitute a key decision thereby, requiring, Cabinet Member approval.

## **11. Staffing Implications**

11.1. This project has been and will continue to be managed and delivered by the Development team in Growth, Planning and Housing and the Development department will be delivering the scheme through the Delivery team. Sufficient capacity exists within this team to deliver this project.

## **12. Consultation**

12.1. Ahead of site investigation works starting on site a letter was sent out to local residents in January 2021 introducing Wates the contractor and highlighting the initial activities.

12.2. Regular meetings are now taking place with Luxborough Tower Residents Association and offers to meet with Newcastle House Management company have also been made.

12.3. The Council is working with Wates to develop a Communications Plan. It is intended that there will be regular meetings with local residents and regular newsletters published.

12.4. A Ward Councillor Cllr briefing note was issued on 21 September 2021 setting out the recommendations referred to in this Paper. A question was raised around the specific community use benefits that will exist on the new scheme. In response, the Council highlighted the planned use for the commercial space on the ground floor and also the commitments from the Contractor as part of their Responsible Procurement Delivery Plan. No other comments have been received.

12.5. On 23rd July 2020, WCC submitted an application for Faculty Advice to the Diocese regarding the proposal to replace the existing railings and brick wall along the site's western boundary with a new wall and rear fire escape for the nursery. In December 2020, an informal meeting took place with the Diocese at which stage it was agreed that formal Faculty Approval would be sought by the Council in due course. The Diocese have recently allocated a representative to deal with the application. The final details of the Councils proposals have now been submitted to the Diocese and Faculty Approval is expected within the next two months.

## **13. Next Steps and Key Milestones**

13.1. Below is a summary of the next steps and key milestones leading to the main works starting on site:-

13.1.1. Release Contract documents to Wates – 11 October 2021

13.1.2. Party Wall Awards agreed – 15 October 2021

13.1.3. Main Works start on site - 25 October 2021

