

MAYOR'S EXECUTIVE DECISION MAKING

Tuesday, 25 July 2017


Mayor's Decision Log No. 165

1. **FIRE SAFETY - DETAILED PROPOSALS FOR ADDITIONAL
RESOURCES AND URGENT WORKS (Pages 1 - 14)**

If you require any further information relating to this meeting, would like to request a large print, Braille or audio version of this document, or would like to discuss access arrangements or any other special requirements, please contact: Matthew Mannion, Committee Manager, Democratic Services

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<p align="center">Individual Mayoral Decision Proforma</p> <p align="center">Decision Log No: 165</p>	 <p align="center">TOWER HAMLETS</p>
<p>Report of: Ann Sutcliffe Interim Corporate Director Place Directorate</p>	<p>Classification: Unrestricted</p>
<p>Fire Safety - Detailed proposals for additional resources and urgent works</p>	

Is this a Key Decision?	No
Decision Notice Publication Date:	20/07/17
General Exception or Urgency Notice published?	Yes In the public interest – The report details urgent fire safety works that must be addressed immediately.
Restrictions:	Unrestricted
Reason for seeking an Individual Mayoral Decision	The report details urgent fire safety works that must be addressed immediately.

EXECUTIVE SUMMARY

This report seeks the Mayor's agreement for the waiver of the council's procurement procedures in relation to urgent works needed to address fire safety concerns following the Dickenson House fire on the Avebury Estate.

This report also seeks Mayoral authority to increase the management fee payable to Tower Hamlets Homes (THH) in order to fund the appointment of additional staff to undertake fire safety related work

DECISION

Recommendations:

The Mayor is recommended to:

1. Agree to waive the council's procurement procedures to allow the appointment of Chigwell to carry out fire stopping works on the Avebury estate;
2. Authorise the Corporate Director to award a works contract to Chigwell estimated at a cost of £500,000 subject to the following:

- Site surveys are carried out to identify the scope of works
 - The authority extends only in as far as the works in the works contract have been identified in the site surveys
 - The works contract value is reported back to the Mayor at the first cabinet following agreement of the contract value or as otherwise directed by the Mayor”
3. Authorise the Corporate Director of Place to determine the final contract award sum based upon the works identified following the completion of site surveys;
 4. Agree to increase the Tower Hamlets Homes management fee by £425,000;
 5. Authorise the Corporate Director of Place, after consultation with the Corporate Director and Monitoring Officer, Governance, to agree the final terms and conditions of any agreement to implement these decision; and
 6. Authorise the Corporate Director and Monitoring Officer, Governance, to execute all necessary contract and ancillary documents to implement these decision in accordance with the Council's constitution.

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APPROVALS

1. Corporate Director proposing the decision

I approve the attached report and proposed decision above for submission to the Mayor.

Signed  Date 20/07/17

2. Chief Finance Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

Signed  Date 21/07/17

3. Monitoring Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

(For Key Decision only – delete as applicable)

I confirm that this decision:-

(a) has been published in advance on the Council's Forward Plan OR
(b) is urgent and subject to the 'General Exception' or 'Special Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules

Signed  Date 20/7/17

4. Chief Executive


I have been consulted on the content of the attached report which includes my comments where necessary.

Signed  Date 24/07/17

5. Mayor

I agree the decision proposed in the recommendations above for the reasons set out in the attached report.

Signed  Date 24/7/17

<p style="text-align: center;">Individual Mayoral Decision</p> <p style="text-align: center;">20th July 2017</p>	 <p style="text-align: center;">TOWER HAMLETS</p>
<p>Report of: Corporate Director, Place</p>	<p>Classification: Unrestricted</p>
<p>Fire safety on the Avebury Estate</p>	

Lead Member	Councillor Sirajul Islam Cabinet Member for Housing
Originating Officer(s)	Mark Baigent, Interim Divisional Director Housing And Regeneration John Coker, Acting Divisional Manager Strategic Housing
Wards affected	Bethnal Green
Key Decision?	No
Community Plan Theme	One Tower Hamlets

Executive Summary

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This report also seeks Mayoral authority to increase the management fee payable to Tower Hamlets Homes (THH) in order to fund the appointment of additional staff to undertake fire safety related work

Recommendations:

The Mayor is recommended to:

1. Agree to waive the council's procurement procedures to allow the appointment of Chigwell to carry out fire stopping works on the Avebury estate;
- 2 "Authorise the Corporate Director to award a works contract to Chigwell estimated at a cost of £500,000 subject to the following:
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3. Authorise the Corporate Director of Place to determine the final contract award sum based upon the works identified following the completion of site surveys;
 4. Agree to increase the Tower Hamlets Homes management fee by £425,000;
 5. Authorise the Corporate Director of Place, after consultation with the Corporate Director and Monitoring Officer, Governance, to agree the final terms and conditions of any agreement to implement these decision; and
 6. Authorise the Corporate Director and Monitoring Officer, Governance, to execute all necessary contract and ancillary documents to implement these decision in accordance with the Council’s constitution.

1. REASONS FOR THE DECISIONS

- 1.1 This report sets out a proposal to engage Chigwell to carry out urgent fire stopping works on the Avebury Estate in Bethnal Green. These works are needed urgently in order to address fire safety concerns following a rapid review of actions required after a fire on the Avebury Estate.

This report also seeks Mayoral authority to increase the management fee of £31.9 million payable to Tower Hamlets Homes (THH) by £425,000 in order to fund the appointment of additional staff to undertake fire safety related work.

2. ALTERNATIVE OPTIONS

- 2.1 This work has been identified as urgent, alternative options would be to include the work in Tower Hamlets Homes' mainstream procurement and work cycles for both staffing and delivery. This would result in considerable delay in starting the identified works and therefore extending a known risk.

3. DETAILS OF REPORT

Background

- 3.1 The Fire Risk Assessment (FRA) programme in Tower Hamlets Homes (THH) has significantly improved over the last 18 months or so. THH have up to date FRAs for all council-owned blocks and have been in discussion with council colleagues on the best approach to address the issues raised in the FRAs. This includes the procurement approach to having a specialist contractor appointed to tackle the issues identified across the THH estate.
- 3.2 However the tragic fire at Grenfell House and the ongoing investigations into cladding and other issues that has resulted in the evacuation of tower blocks on Camden's Chalcott Estate has given an even greater degree of urgency for all landlords.
- 3.3 In addition, a recent fire on the Avebury Estate has served to further emphasise these issues and has in fact identified another risk issue relating to fire stopping/breaks in roof spaces.
- 3.4 Where works are needed it is preferable that THH undertake these alongside its Better Neighbourhood programme. However, some works are needed quite urgently due to the risk profile and the need to ensure the safety and security of residents.

Avebury estate fire stopping works

- 3.5 This report seeks the Mayor's authority to directly appoint a contractor (Chigwell) to carry out fire stopping works across the Avebury estate. These works are estimated to cost £500k but this is subject to additional site surveys and verification.
- 3.6 A recent fire at Dickinson House on the Avebury estate was speedily dealt with by the fire service and there were no casualties. The external rockwool mineral fibre insulation and covering render also performed as it should have. However the fire originated in a top floor flat and spread through the roof space of this newly refurbished block.
- 3.7 An initial inspection of a sample of the other blocks has identified a lack of fire stopping within the roofs on other blocks on the estate. The cost of fire stopping works are provisionally estimated to be £500k subject to the further site surveys currently taking place.
- 3.8 Chigwell has been identified as a contractor that could do the works urgently. They have previously carried out works for the council and performed well in doing so. Although it is intended that they would hold their competitive prices from the contract which expired on 31 March 2017, this would require a waiver of the council's procurement procedures to enable the contract to be awarded without a competitive, open market process.
- 3.9 The procedures require the use of a compliant framework or procurement through an open tendering process. However, as this would be a works contract, it is significantly below the OJEU threshold for works of £4.1m.
- 3.10 While Corporate Directors have authority to waive the procurement procedures for contracts up to the value of £164k in accordance with Paragraph 50.1 of the Procurement Procedures this contract exceeds that amount and so Mayoral approval is being sought for the waiver.
- 3.11 The Mayor is asked to note that these works will not be the subject of formal leaseholder consultation. The council will apply to the First Tier Tribunal (FTT) for their consent to recharge leaseholders under emergency action. If the council fails in the application, the council will be limited to recovering £250 per leaseholder.

THH fire safety resources

- 3.12 In addition to the proposed fire stopping works to the Avebury Estate, officers – both from the council and THH – are also implementing a number of additional actions in relation to fire safety across the THH estate.
- 3.13 To deliver fire safety works as soon as practicable, THH urgently needs additional staff for commissioning and managing the actions arising from over 900 FRAs that are nearly all graded at ‘moderate risk’ – with nine blocks graded at ‘substantial’ risk. This increase in fire safety work is likely to be an ongoing requirement.
- 3.14 The number of staff likely to be required is set out below. Assuming consultant support during the remainder of 2017/18 and permanent staff thereafter it is likely that the cost will be of the order of £350k in the current year and a similar amount in future years:
- 1x Senior Fire Safety Co-ordinator to manage the delivery of the fire risk programme.
 - 1x Senior Procurement Officer to assist procurement work in THH. This will allow the part release of THH’s interim Procurement Manager to lead the fire safety programme until a Fire Safety Manager post can be funded and established.
 - 1x Procurement Surveyor to prepare procurement documents and specifications for fire safety works packages.
 - 1x Senior Surveyor to investigate potential fire safety issues in blocks e.g. with old window panels, ventilation, electrical and heating systems and recommend future fire safety work packages.
 - 1x Resident Liaison Officer to facilitate and carry out preparatory work for numerous TRA and residents meetings on fire safety.
 - 1x Surveyor to commission and project manage Mears’ interim fire safety FRA works in the ‘substantial risk’ blocks.
 - 1x Clerk of Works to quality control FRA work once on site. This resource will need to increase as the fire safety programme gains momentum on site. Experience elsewhere has shown that fire safety works such as fire stopping must be carefully carried out to successfully provide integrity to fire compartments. This will be reviewed later in 2017/18.
- 3.15 It is likely that additional funds for backfilling Housing Officers’ time on intensive additional tasks carrying out enforcement of fire safety will be required; this potential cost has not yet been quantified.

- 3.16 There is a need to ensure that an effective communications plan is in place to facilitate the release of FRAs and respond to a large volume of supplementary questions from residents or the media. It is proposed that two agency staff be recruited for an initial six month period with a review towards the end of that time to assess whether there is an ongoing need for the roles.
- 3.17 Similarly there are likely to be a significant number of additional calls, emails and other correspondence. Bearing in mind the operating hours, it is proposed that three agency staff be recruited for an initial six month period with a review towards the end of that time to assess whether there is an ongoing need for the roles.
- 3.18 Approval of approximately £75k is requested for the roles in 3.13 and 3.14 for an initial six month period.
- 3.19 This report seeks Mayoral authority to increase the management fee the council pays to THH by £425,000.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report highlights potential fire-stopping works that are necessary to roofs on Avebury Estate, identified following the fire at Dickinson House, and seeks authority to waive the Council's procurement procedures in order to urgently appoint a contractor to undertake the works. Initial indications are that the cost of the works will be approximately £500,000 which will be funded from within the £6 million that was approved for Fire Risk Works within the 2017-18 to 2019-20 capital programme.
- 4.2 In order to complete the works as a matter of urgency, it is proposed that formal leaseholder consultation is not undertaken and that retrospective approval is sought via a First Tier Tribunal. The cost of the tribunal is estimated at £20,000 which will be funded from HRA balances. It should be noted that if the application to the tribunal is unsuccessful, the potential capital recharges to leaseholders might be reduced to a cap of £250 per property (paragraph 3.11).
- 4.3 The report also requests approval for additional revenue funding. The cost of additional staffing resources to commission and manage additional fire safety works are estimated at £350,000 per annum, with a further £75,000 required to finance temporary communications and liaison roles. The increased revenue costs will require an increase of £425,000 in the management fee paid to THH. This will initially be financed from HRA balances during 2017-18 but elements of the costs may subsequently be capitalised if appropriate. The

on-going resourcing need will be incorporated into the budget process for future years

5. LEGAL COMMENTS

- 5.1 Section 20 of the Landlord and Tenant Act 1985 as amended, imposes a duty on the Council to consult leaseholders about qualifying works or before entering into a qualifying long term agreement for which they intend to recharge the leaseholders. Qualifying works are defined as works carried out on a building or any other premises. The various works referred to in this report would constitute qualifying works and thus require consultation. If the council does not consult or the First Tier Tribunal (FTT) refuses to dispense with consultation (see below), then the council will be limited to recovering £250 per leaseholder for works undertaken.
- 5.2 Although there is provision in the Landlord and Tenant Act to seek dispensation of the requirement to consult in relation to any works from the FTT, the tribunal will only do this if it is satisfied that it is reasonable to do so. Therefore there is no guarantee that this will be allowed. If such a dispensation is refused then the council will be limited to recovering £250 per leaseholder.
- 5.3 Leaseholder consultation is subject to Regulations made under the Landlord and Tenant Act 1985 and the timescale is such that a lead in period of at least 3 months is required for works which are genuinely urgent- as in the case of fire safety precautions. It should be realistic to anticipate that the FTT will be satisfied that it is reasonable.
- 5.4 Councils owe a fiduciary duty to their rate payers to recover monies due to them and should not dispense with the requirement to consult lightly. Should the council be minded to do so then it would need to have some objective justification. It would need to strike a balance between the potential loss of recoverable costs against the need to effect the necessary works in a way that minimises exposure to risk for residents. If leaseholders are to be consulted then the timescales for consultation must be built into the programme.
- 5.5 There are provisions within the council's RTB leases that permit the council to enter the flats to carry out works considered necessary or advisable for the proper management, maintenance and safety of the building so long as reasonable notice is provided to Lessees. This will include works required to ensure the fire safety of the building. In case of emergency, no reasonable notice to Lessees is required.

- 5.6 Under the LBTH leases, front entrance doors to individual flats form part of the demise and are not retained by the council. This means that they are the leaseholder's responsibility but the council can do works to them where this is advisable for the safety of the buildings. Arguably this can extend to replacing them for reasons of fire safety. However this is likely to be considered an improvement and LBTH leases do not expressly allow for recoverability of the costs of improvements. This means that there is a risk that the costs of replacing doors cannot be recovered as service charges.
- 5.7 The Housing Act 2004 places a duty on local authorities to take appropriate enforcement action where serious hazards are identified in residential properties. This includes where there is a risk of harm associated with exposure to uncontrolled fire and associated smoke.
- 5.8 There is a duty to consult with the fire and rescue authority where enforcement action is to be taken in relation to a prescribed fire hazard. As the Council is intending to carry out the works referred to in the report, it is not envisaged that enforcement action will be required.
- 5.9 Under the Regulatory Reform (Fire Safety) Order 2005 it is the Fire Authority that has primary responsibility for enforcing fire safety standards. They can serve notices, including prohibiting the use of the whole or part of a premises or restricting the use if they consider it appropriate.
- 5.10 It is notable from the body of the report that two procurement issues arise. It would appear that THH have identified a contractor to perform remedial works and that further fire risk assessments need to be purchased.
- 5.11 The Council is required to abide by section 3 Local Government Act 1999 in as far as its activities must represent best value. Also, the Council must comply with its own constitution and governing domestic and European Procurement Law in respect of all its purchases.
- 5.12 The contract for the works is of a value below the relevant European Threshold and therefore ordinarily requires domestic advertisement. The extension to the contract for fire risk assessments though is above the lower services threshold which would ordinarily trigger a reprocurement.
- 5.13 However, it is notable that in any event THH as a contracting authority (or LBTH as the case may be) may use the negotiated procedure without a prior advert in respect of one contractor provided that, and in accordance with Regulation 32(2c) of the Public Contracts Regulations 2015, the contracting authority is satisfied that there are "reasons of extreme urgency brought about by events unforeseeable by the contracting authority [and] the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with."

5.14 It is notable from the report that the Council is also purchasing further management services from Tower Hamlets Homes Limited. This is the effect of increasing the management fee, and might ordinarily have attracted the need to subject such spend to competition. However, this is not necessary in this instance. Regulation 12 (1) provides that the Council may purchase services from another public body provided that:

- the Council has sufficient control over the other public body in order that the control is similar to that which it exercises over one of its own departments,
- that the services provided by the other body are mainly for the purposes set out by the Council and
- there is no direct private capital investment in the other body.

The relationship between Tower Hamlets Homes Limited and the Council satisfies these requirements.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 Recommendations made in this report will ensure increased safety to all residents on the affected estates. Resident consultation has started on some of the blocks and will be increased as the programme progresses.

7. BEST VALUE (BV) IMPLICATIONS

7.1 This report recommends urgent action at a potential cost to the Council, however the inherent value of the proposal lies in the risk of not proceeding quickly with the recommendations.

7.2 Given the considerable concern regarding fire safety, it is vital that the borough minimise any risk in this area by providing adequate fire safety measures.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 We will ensure that all products used, conform to the council's strict sourcing strategy to achieve value for money whilst stimulating local markets and securing community benefits. These will support a strong and sustainable green economy, resilient to climate change.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There are significant risk implications inherent in fire prevention in buildings. Formal risk assessments undertaken by approved leading fire risk assessors have identified a number of high risk buildings (mentioned in this report) that require works and make the case for easing normal procurement requirements to ensure contract capacity is available to THH to remedy this important area of work.
- 9.2 This report also responds to the risks identified following the fire on the Avebury estate. Awarding a contract to Chigwell without an open and competitive procurement procedure carried with it a risk of challenge. The council would normally be expected to demonstrate compliance with the principles of equal treatment, transparency and non-discrimination when procuring services and works. However, the relatively low value, significantly below the OJEU threshold for works, and the urgency of the works mean that risk is lessened.
- 9.3 There is still a degree of uncertainty of the scale of work that is required pending detailed site inspections. The costs could increase if, for example, historical poor workmanship or use of poor materials is discovered. Any emerging issues will be reported to the Corporate Director through the THH client meetings.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 There are no specific crime and disorder reduction implications.

11. SAFEGUARDING IMPLICATIONS

- 11.1 Recommendations made in this report will ensure increased safety to all sections of the community.

Linked Reports – None

Appendices and Background Documents – None

Officer contact details for documents:

N/A