

<b>Cabinet</b>  25 March 2020	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Corporate Director, Place	<b>Classification:</b> Unrestricted
<b>Structural Works – Brewster House and Malting House - Update</b>	

<b>Lead Member</b>	Cllr Sirajul Islam: Cabinet Member for Housing and Statutory Deputy Mayor
<b>Originating Officer(s)</b>	Karen Swift: Divisional Director Housing and Regeneration
<b>Wards affected</b>	Limehouse
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	20th January 2020
<b>Reason for Key Decision</b>	Financial Threshold
<b>Strategic Plan Priority / Outcome</b>	A borough our residents are proud of and love to live in

## Executive Summary

This report sets out proposals for agreeing financial resources to undertake strengthening works to safeguard the structural integrity of two large concrete panel system blocks comprising 112 flats at Brewster House and Malting House. In 2017 the Government advised councils to review the structural condition of blocks that used the Taylor Woodrow Anglian large concrete panel system and to ensure that their structural integrity was sufficient and maintained.

Therefore, in July 2018, November 2019 and January 2020, Wilde Carter Clack (WCC) were commissioned by THH to carry out an assessment of the blocks in accordance with Building Research Establishment (BRE) guidance. WCC concluded in their reports (Appendices 1, 2 and 3) that Brewster House and Malting House require intrusive structural strengthening, particularly as the buildings are at risk of progressive structural collapse in the event of an explosion and possibly following an extremely intense fire which could cause floors to buckle and collapse.

Cabinet in June 2019 considered a report on structural reinforcement works at Brewster House and Malting House. That report set out the details and deliverability of the works and the impact to residents. The report also explained the likely financial cost for the works. Cabinet deferred a decision to allow further investigations of the structure and to enable further discussions with residents.

Resident engagement has taken place and details are set out in section 3.4 of the

report. Further structural investigations have concluded (Appendix 2 and 3). Residents asked the Council to independently validate the structural works recommended and the costs involved. The Council has concluded both these pieces of work and details are contained in this report in Appendices 4 and 5. This report provides a final update on the structural works and seeks Cabinet approval for the following recommendations.

### **Recommendations:**

The Mayor in Cabinet is recommended to:

1. Approve £9,414,088 of capital funding within the Council's provisional five-year HRA Capital Programme to fund the structural works and the associated services required to deliver the works.
2. Award of the works contract to undertake the structural works to Wates in the sum of £8,044,436 (£7,704,436 plus £340,000 for the refurbishment of 40 decant properties to be use as temporary accommodation) in its capacity as a contractor procured via the Council's Better Neighbourhoods Works Framework ("the Framework").
3. Note to formally consult leaseholders in accordance with Section 20 of the Housing Act 1985 and recharge them for the financial apportionment payable towards their portion of the cost of the structural works in accordance with the service charge provisions in leases.
4. Agree to voluntary buy-back leasehold properties in Brewster House and Malting House, with potential financial costs to the Council estimated at an approximate sum of c. £9.6m. This sum would be in addition to the total project cost.
5. Approve the sum of £760,000 from General Fund resources to fund the restitution payment to leaseholders set out in section 3.4.4 of the report, in compensation for the loss or disturbance during the works. Subject to the securing the appropriate budget provision as set out in para 13.10.

## 1 **REASONS FOR THE DECISIONS**

- 1.1 Consulting structural engineers, Wilde Carter Clack (WCC), concluded in their reports (Appendices 1, 2 and 3) that Brewster House and Malting House require intrusive structural strengthening, particularly as the buildings are at risk of progressive structural collapse in the event of an explosion and possibly following an extremely intense fire which could cause floors to buckle and collapse.
- 1.2 The Council commissioned Arup to undertake a review of the WCC reports and structural strengthening proposals. The conclusion of this review is documented by Arup in their report (Appendix 4). Arup agree with the analysis that the blocks need strengthening as they do not meet the current or previously existing standards for normal loads. Arup's review also supports the proposed works. Potter Raper, were commissioned by the Council to undertake a review of the costs proposed. They concluded (Appendix 5) that the costs of the works are properly priced and are fair and reasonable to form the basis to enter into further negotiations.
- 1.3 A risk assessment undertaken by consulting structural engineers Curtins (Appendix 6) states that it is safe for residents to remain in occupation now and during the planned works, with respite facilities and temporary rehusing options available as required.
- 1.4 External Wall Insulation (EWI) works are already being delivered by Wates who have a site set up and who are integral to the works being proposed. The EWI works have been suspended pending the procurement and delivery of the proposed structural works. Wates will conclude the EWI works following the completion of the structural works.

## 2. **OPTIONS**

- 2.1 **The Council can opt to disregard undertaking the structural works:**  
Undertaking this work will be complex involving all the 112 dwellings and cause disruption to the amenity of residents due to the length of expected duration of the works, being 22 months. The floor slabs in each of the blocks require strengthening particularly as the buildings are at risk of progressive structural collapse in the event of an explosion. The structural assessments conclude that the buildings need strengthening.
- 2.2 **Proceed with undertaking the proposed structural works and recharge the leaseholder in accordance with the term of the lease:**  
The structural works are required as a result of the findings from WCC's investigations.
- 2.3 The total estimated cost of this option is £9,414,088. A summary of the cost and allowance categories is shown in table 1 below

Table 1

ITEM	COST (£)
Structural Works	7,704,436
Contingency (unforeseen Works)	150,000
Security & Safety (Walk and watch)	190,722
Resident Disturbance: Decanting; Temporary Accommodation; Respite facilities and rehousing.	650,000
THH Staffing Resources	578,930
Structure Engineer and Fire Safety Engineer	140,000
<b>Total</b>	<b>9,414,088</b>

- 2.4 Redevelop the site of the Malting House and Brewster House blocks to replace existing homes and build additional new homes:** The option to demolish Malting House and Brewster House and redevelop new homes on the estate was considered. Outline views from architects suggests that there is scope to increase density in line with planning policy, building around 160 new homes. However, the considerable costs of rehousing residents, buying out and compensating leaseholders, demolishing the existing blocks and then constructing new buildings would make this option unviable in normal commercial development terms, even if all the additional homes were sold at full market value. Based on outline assumptions, the net cost to the Council (after cross-subsidy from open market sales) is estimated at between £25m and £40m.
- 2.5** If the Council opted to increase the supply of social rented homes on the estate through redevelopment, funding would be limited to HRA borrowing, with use of RTB receipts only possible under current rules for additional new social homes, not the replacement of existing homes. Therefore only 48 homes if used as affordable housing of the 160 homes could receive 30% RTB receipts towards the cost. As indicated above, the net cost of redevelopment is estimated at between £25m and £40m. On a unit cost basis per rented dwelling, this means a cost of between £223k and £357k, in contrast to an average refurbishment cost per dwelling of £87.5k. Therefore, despite the high costs of the strengthening works set out in this report, officers recommend that the refurbishment offers better value for money to the Council than redevelopment and is less disruptive to residents.
- 2.6 Whole Estate Regeneration including Malting House and Brewster House:** Remodelling the whole estate (including Brewster House and Malting House and the neighbouring low-rise blocks) would involve replacing the existing homes and providing much needed additional new homes. Whilst further feasibility work on this option could be undertaken to explore the scope and tenure mix, whilst complying with planning policy on the tenure mix, this would further delay the necessary structural works needed to Brewster and Malting Houses.

- 2.7 The overall net cost to the HRA will be significantly higher than redevelopment of only Malting House and Brewster House.
- 2.8 **Full decant of Malting House and Brewster House blocks prior to commencing the proposed works:** The option to vacate both blocks prior to starting the works and throughout the works contract has been considered. This option would effectively extend the timescale by an estimated nine months (six at the outset and three at the end). This approach would significantly increase the overall costs; with an estimated £13.5m decant cost increasing the overall project costs to c. £23m. The risk assessment undertaken by Curtins, the specialist structural engineering consultants, confirms that the structural works can be carried out safely with the majority of residents remaining in occupation (other than periods of rehousing required for those flats directly undergoing strengthening works at any one time). The Arup report supports the proposed methodology.

### **3 DETAILS OF THE REPORT**

- 3.1 During the delivery of external wall insulation cladding works (EWI) it was deemed necessary to conduct an initial structural survey to ensure that the strength of the existing building fabric would safely adopt the new cladding system. In addition, this was supported by the Ministry of Housing, Communities and Local Government (MHCLG) advice to landlords to review the condition of their large panel system blocks and to ensure that their structural integrity is sufficient and maintained. Therefore, the structural engineers' brief was extended to include a review of the buildings' ability to withstand a disproportionate collapse in the event of an explosion.
- 3.2 WCC, the engineers who were subsequently commissioned to conduct the intrusive surveys emphasised the importance to undertake the remedial structural works in their reports of July 2018, December 2019 and January 2020 (Appendix 1, 2 & 3).
- 3.3 In June 2019, Cabinet considered the report on structural reinforcement works at Brewster House and Malting House, which set out the details and deliverability of the works and the impact to residents. The report also explained the likely cost to leaseholders and the potential support from the Council. Cabinet resolved to defer a decision to allow for further consultation and discussion with residents.
- 3.4 **Resident Discussions, Actions and Outcomes**
- 3.4.1 Since June 2019 Cabinet officers have met with residents and have been maintaining contact with residents in other ways.
- Residents meetings on 24th July 2019 and on 9<sup>th</sup> March 2020
  - A leaseholder meeting on 4th September 2019

- Four newsletters have been sent to residents in June; July; August 2019 and January 2020
- The on-site team are available Monday to Friday for queries and meet with the TRA Chair and residents every Thursday morning
- Council officers have been in correspondence with individual leaseholders
- Council officers have been available to meet with leaseholders and have done so when meetings have been requested
- Council officers have indicated their availability to meet with tenants at the Thursday Coffee Mornings
- THH has made ex gratia payments of £75 each to all residents for contributions toward heating bills while the EWI remains incomplete to the NE and SW elevations causing cold bridging internally to flats, these payments were made in 2018 and 2019. In addition to this, 16 flats on the ground and first floors in both blocks were also given £45 in 2019 as a contribution towards the costs of electricity for lighting, as their flats were kept wrapped in scaffolding and netting longer than was anticipated.
- THH has a dedicated project site team who are in constant contact with residents and are available Monday to Friday on site to deal with residents' concerns.
- A flat which has a mock-up of the new steel beams has been made available to residents to view. Photographs of the mock up flat have been published in resident newsletters.

3.4.2 On 12<sup>th</sup> August 2019, the Mayor wrote to the Secretary of State for MHCLG requesting that the Government step in to pay for the works. The Mayor wrote a follow up letter to the Secretary of State on 8<sup>th</sup> January 2020. The MHCLG has not responded to this correspondence to date.

**The meeting with residents and leaseholders in 2019 resulted in a range of actions for the Council and THH to undertake, these are set out in the sections below**

### 3.4.3 Due Diligence

- a. **Extended Investigative Surveys:** WCC has conducted further internal intrusive tests in the under-croft area and additionally in vacant flats in each block to complete the pre-works surveys they previously recommended to be undertaken prior to the commencement of the structural works. The intrusive investigations are now complete and WCC issued an addendum report in December 2019 (Appendix 2). This report indicated that a further investigation of the podium floor slab, and underground garages/storage units, within the car park areas

beneath the blocks be undertaken. WCC provided a further report on this at Appendix 3.

- b. **Works and Cost Validation:** The Council commissioned Arup to independently validate the structural works and Potter Raper to review the proposed costs.

Arup were asked to provide a review of the findings from WCC and their subsequent proposed works. Arup agree with the analysis that the blocks need strengthening as they do not meet the current or previously existing standards for normal loads. Arup's review also supports the proposed works. (See Appendix 4).

Potter Raper were asked to review what has been priced by the contractor in relation to the works specification, programme, scope, assumptions, exclusions and allocation and pricing of risk and to report upon the general pricing methodology. Potter Raper concluded that the cost of the works appears to be properly priced and are fair and reasonable to form the basis to enter into further negotiations. (See Appendix 5).

Additionally, Potter Raper has been instructed by the Council to review the costs and determine/confirm whether they were correctly apportioned to leaseholders (when the works have been completed). This would ensure transparency and eliminate any possibility of cost being passed on to leaseholders as a result of "cost contamination" from the existing contract for the EWI works.

- 3.4.4 **Restitution Payments by the Council to leaseholders:** The Council's fiduciary duty is to charge leaseholders where they are lawfully liable for the cost of works. At the same time, the Mayor recognises the significant financial costs estimated for the necessary structural works to be undertaken in this case. In acknowledgement of this he supports the principle of offering leaseholders a "restitution" payment which would compensate them either as remaining owners or as part of a leasehold interest buyback agreement.

The proposed restitution payments are based upon several factors including bed-sizes and circumstances (retaining/selling). The payments are summarised in table 2 below:

Table 2

	1 BED	2 BED	3 BED
Buyback	£19,250	£22,350	£25,760
Retained resident leaseholder	£5,100	£13,625	£14,625
Retained sub-letting leaseholder	-	£8,225	£8,925

The rationale for the amounts is below:

- a. **Buybacks:** this is a voluntary sale by the leaseholder. The Council recognises the difficulties the proposed works have caused to the leaseholders resulting in the need to sell their homes. Therefore, the proposed restitution payment includes elements for potential rent loss, legal costs on repurchasing a new home, and a provisional sum deduction given the possibility that works costs deducted from the valuation of the leaseholder's property before being acquired by the Council includes contingencies that may not actually be required.
- b. For **retained resident** leaseholders, the proposed restitution payments reflect estimated costs of making good, loss of demise (where new steelwork slightly reduces the living space in the home) and loss of quiet enjoyment during the works.
- c. For **retained sub-letting** leaseholders, the proposed restitution payments reflect making good and loss of demise. Any decant costs for sub-tenants (if required) will be settled separately with those individuals.
- d. The Council is not proposing to cap the liability for those lessees where the full sum for works will be due.

#### 3.4.5 **Acquire Leasehold Properties under the Council's Buyback Programme:**

The Council's existing programme applies at Brewster House and Malting House. However, the cost of the work will be deducted from the market value. It is considered that the Buyback Programme provides a good option for both the lessees and the Council. It removes, disputes over making good and facilitates the carrying out of the structural works as the flats will be vacant during the proposed works. In turn the Council has a home returned for letting.

#### **4. Proposed Structural and Associated Works**

- 4.1 The Recommendations 2 and 3 seek Cabinet's approval to enter into contract for structural works to be undertaken by Wates (subject to contract and s20 Housing Act 1995 consultation prior to contract award): The works involve:
- To undertake structural strengthening works externally to the two blocks and complete the EWI.
  - Undertake structural strengthening works internally to flats and reinstate finishes to the flats.
  - Provision of daytime respite and decant facilities on an individual household assessed basis.
- 4.2 The structural works are expected to take around 22 months to complete. The structural works to both blocks will be carried out simultaneously. A programme of the works is contained within Appendix 7.
- 4.3 Based on procurement and legal advice, officers recommend making use of the new Framework to procure the contractor to deliver the structural strengthening works. Wates is the highest scoring contractor on the Framework and thus can be directly awarded a contract, subject to the Framework award rules being followed.
- 4.4 Wates has conducted a competitive tender between two specialist structural contractors Bersche-Rolt and Cintec. This work makes up most of the physical works and Wates tender price.
- 4.5 THH officers have been actively involved during the tender process. Due to the nature of the structural works it has not been possible to agree a fixed price with Wates. However, the tender includes appropriate provisional sums to cover this. In addition, a contingency sum has been incorporated to cover unforeseen works or resident support services that may be required.
- 4.6 Wates are responsible for the site and the contractors, and for the structural design and structural works sign-off via their own structural engineer.
- 4.7 WCC, structural consulting engineers who have a long association with the two blocks and have been actively involved since cladding and EWI works, are engaged and are responsible for checking the design and the works on behalf of the Council. Building Control will also continue to review as required.
- 4.8 Wates tender price submitted in January 2019 totalled £6,276,605.50. This sum has been subject to inflation in accordance with the Framework, final design costs and the additional works as identified in Appendix 3 brings the total to £8,044,436.
- 4.9 In addition, a full buyback take-up by leaseholders would add further potential costs estimated of c. £9.6m (set out in 3.4.5).

## 5. **Consultant Structural Engineer**

- 5.1 The consultant structural engineer WCC has been leading on the structural investigations and solutions. They have provided the initial structural solution and design.
- 5.2 It is proposed that they are retained for the duration of the structural works. Their role will be to oversee the specialist structural works and to provide ongoing advice and support.
- 5.3 WCC has submitted a tender price to oversee the structural works and to provide ongoing advice and support.
- 5.4 The cost for their remaining commission is currently estimated as follows in table 3:

Table 3

<b>STRUCTURAL ENGINEER</b>	<b>COSTS</b>
Wilde Carter Clack (Consultant Structural Engineer)	£120,000.00
Contingency (Including Fire Safety Report)	£20,000.00
<b>Total</b>	<b>£140,000</b>

- 5.5 Oakleaf Ltd has been engaged by THH to further investigate the fire safety of the structure and compartmentalisation within flats.

## 6. **Respite and Rehousing (Decant)**

- 6.1 The proposed work is extremely intrusive and will require respite and some decant (temporary rehousing) facilities to be offered to some residents.
- 6.2 This service will apply equally to tenants and leaseholders. Although the leases do not obligate the Council to provide these facilities.
- 6.3 Daytime respite facilities are being established via Wates. This includes temporary accommodation on-site to allow respite during the dwelling specific intrusive works. THH officers will work with each household to determine the extent to which they need to use daily respite facilities or be temporarily or permanently rehoused.
- 6.4 Several empty properties will be held and made available for longer term decants. Further temporary and/or permanent decant will be made available off-site in hotels and by way of permanent rehousing accommodation. In addition, an emergency overnight facility will be available on-site should it be required. This will avoid creating additional duress to households in the event of an emergency decant.

6.5 There is a costing allowance for daytime respite, on-site temporary accommodation, and off-site temporary accommodation incorporated into the project costs. This will be adjusted as required.

## **7 Tower Hamlets Homes Staff Resourcing**

7.1 Due to the complex and intrusive nature of the structural works, it is proposed to allocate the following additional resources to the contract. This is based on 22-month duration on agency rates. It also assumes that on current information it is possible for the works to be carried out with most residents in occupation but with respite facilities provided and short term decants as the exception; based on needs as shown in table 4.

Table 4

<b>POST DESCRIPTION</b>	<b>COST</b>
Project Management	£279,500
Surveying	£140,000
Resident Liaison Coordinator	£98,000
Decant Coordinator	61,430
<b>Total</b>	<b>£578,930</b>

7.2 This team will be responsible for managing all aspects of the contract, along with all external stakeholder engagement.

7.3 Should a full decant become required (although this is not currently anticipated) then additional resources would be needed. These are estimated as being an additional Decant Officer and one Admin Officer at a total additional cost of £110,000.

## **8. RESIDENT ENGAGEMENT**

8.1 Residents have been kept informed throughout the structural investigation period via weekly drop in coffee mornings, monthly newsletters, regular liaison with the TRA Chair, access to the onsite Project Team, a drop in afternoon/evening session with THH officers followed up by FAQs on the findings and proposed works. THH and the Council have held three residents' meetings two with all residents on 24<sup>th</sup> July 2019 and 9<sup>th</sup> March 2020, and the other on 4<sup>th</sup> September 2019, just with leaseholders, the details of which are set out in section 3.4 of the report. The ward Councillor and Deputy Mayor have been kept regularly updated of the position.

8.2 Throughout 2019 THH has undertaken Resident Impact Assessments by visiting residents in their homes to ascertain their specific needs during the works. These assessments will be subject to ongoing reviews to ensure residents' needs are catered for before and during the works.

## 9. LEASEHOLD CONSIDERATIONS

- 9.1 It is proposed that leaseholders are charged a financial apportionment for all the necessary structural works. The structural works will be disruptive and intrusive, and it will be important to establish an equitable approach for all residents notwithstanding that the leaseholders will be recharged for the works. It should be stressed that the structural works are of a very exceptional nature and so costs are an estimated approximate sum.
- 9.2 Based on the recommended option in section 2.2 - 2.3, the financial charges for leaseholders are estimated at this stage to be in the approximate region of: £63,000, £76,000 and £85,000. The range reflects a 1 bed, 2 bed and 3-bedroom property. The total to be billed to lessees will be in the region of £2m.
- 9.3 Section 20 Notices will be served upon leaseholders for the estimated cost of the works and applicable fees. The cost of the works will be based upon the tender submitted by Wates under the new Major Works Qualifying Long Term Agreement.

### **Major works payment options**

- 9.4 Currently leaseholders have a range of support payment options previously agreed by the Council. The support payment options administered by THH are available to all leaseholders, subject to eligibility. Malting House and Brewster House leaseholders will be able to make use of the existing wide-ranging payment options including the support set out in paras 3.4.4.

### **Restitutionary Claims at Malting House and Brewster House**

- 9.5 As the circumstances at Malting House and Brewster House are unique there does not appear to be any existing policy in this area. For example, Tenants decants are covered by: Land Compensation Act 1973 (S37 and 38 – Disturbance Payments), Housing Act 1985 (S26 - Financial assistance towards removal expenses), Housing Act 1996 (Parts VI & VII – Allocation of housing accommodation & Homelessness). Given the uniqueness of Brewster House and Malting House, there has been reliance on statutory payments as well as a Council's own determined restitution payment set out in section 3.4.4.

### **Benefits**

- 9.6 Some lessees may be entitled to DWP assistance if in receipt of one of the following benefits for 39 weeks or more:
- Income Support
  - Jobseekers Allowance
  - Employment & Support Allowance
  - Pension Credit (Guaranteed element)
  - Universal Credit (excluding tax credits)

9.7 If the above apply then leaseholders may be entitled to assistance with their major works charge. This would entail meeting the leaseholder and going through a Financial Inclusion (FI) assessment which includes an income and expenditure assessment to determine eligibility. As an alternative, leaseholders can also carry out a self-assessment. It is now likely that the first invoice lessees will receive will be September 2021. Therefore, there is plenty of time to assist lessees with these applications if necessary. Applications will need to be made within 30 days of the date of invoice. As the Council now bills on the costs incurred in each financial year, lessees are likely to receive such invoices every September and possibly up to September 2023 or even September 2024.

## **10. PROCUREMENT ROUTE**

10.1 Wates are one of the contractors who have been appointed to the Framework. The Framework is suitable as a procurement route to procure a suitable contractor to undertake the proposed structural works. Wates are the highest scoring contractor in the main works lot of the Framework. Therefore, it is a direct award (call-off contract) to Wates.

10.2 Wates were invited to tender for the works on a negotiated tender basis. This was because the designs of the structural strengthening works were still in progress. Wates and the two specialist structural strengthening subcontractors were inextricably involved in developing the specialist design for the structural works. This forms the major element of the project.

10.3 The other works relate to opening areas within residents' homes, managing decant of residents and their belongings, and reinstating the residents' homes upon the completion of the work. The works need to be undertaken in a specific sequence due to the close tolerances of lining up the steel columns within flats. Thus, the logistics around managing the works and the residents' issues are significant. Wates will be the principal contractor and will manage the site on behalf of THH.

10.4 Wates has priced some of the enabling works and the property reinstatement works as provisional sums. This is because the exact extent of these works is unknown until all residents support plan have been agreed with them. This approach is preferred as it was considered that Wates would price these items on a worst-case scenario if they were required to price at risk.

10.5 Wates already has a site presence due to their contract for EWI works. Their contract is currently suspended pending the delivery of the structural strengthening works. The EWI works contract will then recommence. It is therefore considered contractually and logistically advantageous for Wates to carry out the structural strengthening works.

10.6 There is a heavy reliance on resident liaison officers provided both by Wates and THH. This service is essential in order that resident issues are effectively

managed and avoidable disruption and inconvenience is not experienced by residents.

## **11. EQUALITIES IMPLICATIONS**

- 11.1 A review of equality implications arising from the proposals has been undertaken with officers identifying a number of implications for vulnerable residents concerning the works and decant period. A number of mitigation measures have been put in place for those identified as vulnerable during this period including decanting and respite measures. Residents identified as high risk / vulnerable have been consulted in depth and will continue to be visited during the works to ensure all are supported through the process and any additional needs met. The works have financial implication to leaseholders because they are recharged for their portion of the cost of works therefore, in mitigation, the Council has offered a range of support to leaseholders including payment options, voluntary buyback of leasehold properties and restitution payment.
- 11.2 An Equality Impact Assessment Checklist has been completed (Appendix 8) concluding that the strengthening works can proceed. A full EIA will not be undertaken; the strengthening works will have no impact under the Council's duties arising out of the Equalities Act 2010.

## **12 OTHER STATUTORY IMPLICATIONS**

### **12.1 Best Value Implications**

The contract sum has been negotiated with Wates. Wates has conducted a competitive tender between two specialist structural contractors Bersche-Rolt and Cintec. Procurement and legal officers advise that this approach satisfies the value for money considerations in the framework contract rules. Given the considerable concern across the UK regarding the safety of large concrete panel blocks, it is vital that the borough minimise any risk in this area to the health and safety of residents and the wider community by progressing the structural works. An independent review of the proposed costs was carried out by Potter Raper (Appendix 4). They concluded that the costs appear to be properly priced and are fair and reasonable to form the basis to enter into further negotiations .

### **12.2 Sustainable Action for a Greener Environment**

Officers will ensure that all products used conform to the LBTH 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.

### **12.3 Risk Management Implications**

There are significant risk implications inherent in large concrete panel blocks. A formal risk assessment undertaken by structural engineer Curtins Consulting Limited has identified that the TWA buildings require urgent works.

- 12.4 The risk assessment prepared by Curtins has concluded it is safe for residents to remain in occupation, subject to a risk assessments and methodology statements being completed.
- 12.5 Successful challenge by leaseholders for the structural works and associated costs is a risk. If successful, this would limit recharges to £250 per unit.
- 12.6 There is still a degree of uncertainty of the scale of work that is required pending accessing the proposed areas of work. The costs could increase if, for example, historical poor workmanship or use of poor materials is discovered. Specialist structural engineering advisers are appointed to monitor and mitigate this risk, for which contingency budgets are in place. Any emerging issues will be reported to the Corporate Director through the THH client meetings.

**12.7 Crime and Disorder Reduction Implications**

There are no specific Crime and Disorder reduction implications

**12.8 Safeguarding Implications**

Recommendations made in this report will ensure increased safety to all residents in the two blocks and maintain provision of 80 social rented homes and 32 leasehold homes. Individual household visits and needs assessments are underway to ensure the individual needs of vulnerable residents are adequately supported throughout the period of works.

**13 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 13.1 The cost of the preferred option to undertake structural works on Brewster House and Malting House will cost £9.414m. These costs are capital in nature and will be contained entirely within the Housing Revenue Account. The full cost of the works will need to be included in the Council's provisional capital programme.
- 13.2 Staffing costs estimated at £0.579m have been identified as a requirement to deliver the work. It is anticipated that these costs will be capitalised against the project. The full capital costs will need to be included in the Council's provisional HRA capital budget once approved.
- 13.3 Funding will be through a combination of leaseholder s20 contributions and HRA balances. THH will be leading on the structural works on Brewster House and Malting House and this work will be included in the THH Housing Capital Programme where there is £9.083m spread over the next three years within their planned work. This amount is lower than the planned requirement of £9.414m and THH's total capital programme is in excess of the amount set aside by LBTH for funding the Housing Capital Programme as a whole. Budgets will therefore need to be confirmed ahead of commencing any works.
- 13.4 Any leaseholder property buybacks will be funded through the General Fund. The Council's standard buyback offer will apply but be will adjusted for the

value of these works to each property. Typically, each buyback will cost the General Fund £250k to £300k to acquire. Funding of £19m is available within the provisional capital programme for the wider buyback programme and these properties will need to be considered as part of this.

- 13.5 There are advantages to the General Fund budget as letting these properties at LHA levels to homeless families will reduce the burden on the Temporary Accommodation budget through limiting the use of more expensive nightly paid accommodation.
- 13.6 Right to Buy receipts can be used to fund 30% of each buyback if the Right to Buy purchase took place over 10 years ago. In these cases, the remaining 70% will be funded through General Fund borrowing.
- 13.7 There are two properties that could potentially be bought back where Right to Buy receipts cannot be used as the sales were completed within the 10-year timeframe. Should these properties be acquired then funding will be entirely through borrowing.
- 13.8 It is difficult to estimate the potential borrowing requirement or the call on Right to Buy receipts as it is dependent on the uptake by leaseholders. There are a total of 32 leasehold flats within the buildings that could be bought back. Assuming a purchase price of £300k and 100% uptake, a total funding requirement of £9.6m would be required. This would be made up of £2.7m Right to Buy receipt (30 eligible properties) and £6.9m from borrowing. These funding requirements are less if demand for buyback is lower.
- 13.9 The option of demolition and regeneration of the two blocks has been discounted, however the financial implications have not been modelled in detail. Indicative costs have been identified, indicating that it will be prohibitively more expensive than repairing the existing blocks, primarily as a result of the need to decant. However, it is uncertain that a full decant of the blocks will not be required anyway and if this were the case the decision may not be so clear cut. Regeneration of the whole estate has advantages and could provide more units, greater use of RTB receipts, increased rents, and potential for market sales and will also reduce future costs around repairs and maintenance, FRA works and legislative changes such as decarbonisation but would require more capital.
- 13.10 The Council is making a voluntary contribution in the form of restitution payments to leaseholders. These will amount to £760k in total. These payments will be made from the General Fund and at present no budget has been identified for these costs. Funding will need to be agreed before this cost is approved.

## **14 COMMENTS OF LEGAL SERVICES**

- 14.1 The Recommendations set out in the Report seek Cabinet's approval for the requisite capital resources to deliver the structural works and associated services, within the five-year HRA Capital Programme:
- to award the structural works contract to Wates;
  - to formally consult leaseholders and recharge them for their portion of the cost of the structural works;
  - to agree "voluntary buy-back" of leasehold properties;
  - agree the restitution payments for leaseholders from General Fund resources.
- 14.2 The Council has the legal power to undertake the structural works that are subject to the Recommendations as set out in the report.
- 14.3 Paragraphs 1 and 2 of the report sets out the context and necessity for the structural works to be undertaken at the Brewster House and Malting House blocks as well as the feasibility of various options that the Council may adopt.
- 14.4 Section 3 Local Government Act 1999 requires an authority "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" ("the Best Value Duty"). To reach this balance, prior to choosing how to achieve the Best Value Duty, the Council remains under a duty to consult with local persons. Furthermore, the Council is under a duty to consult under section 105 of the Housing Act 1985 on matters of housing management. The Council have demonstrated in paragraph 3.4 of this report that it has taken steps to engage with the leaseholders.
- 14.5 Cabinet will note some of the flats within Brewster House and Malting House are local authority accommodation. The Council is designated as a local housing authority by the Housing Act 1985 (as amended) ("the Act"), and by virtue of section 9 of the Act is empowered to provide housing accommodation by erecting, altering or improving houses. In addition to this, Section 21 of the Act permits the Council to carry out the general management, regulation and control of such local authority housing.
- 14.6 As detailed within this report, the Council has the legal power to perform the works that are the subject of this report and seeks Cabinet's approval to enter into contract for structural works to be undertaken by Wates (subject to contract and s20 consultation prior to contract award). The Framework advert reflects the scope of the works described in this report. Therefore, the Council is legally entitled to access the Framework.
- 14.7 Paragraph 4.3 of the report advises that Wates is the highest scoring contractor in the main works lot of the Framework. Therefore, in accordance with the Call-Off procedure set under the Framework Wates can be directly awarded this contract.

- 14.8 Cabinet is advised that Wates has undertaken a legally compliant competitive tender process for the works as detailed at paragraphs 4.4-4.6. The Framework contracts are fully compliant with European law and the tender process demonstrates that this award would be compliant with the Council's Best Value Duty referred to above. This is because it represents the most economically advantageous tender determined by reference to a blend of predetermined evaluation criteria and price.
- 14.9 Furthermore, pursuant to section 1 of the Local Government (Contracts) Act 1997 the Council is empowered to procure the structural strengthening work at Brewster House and Malting House as part of its wider powers regarding the construction/refurbishment of local authority housing and associated services.
- 14.10 The Recommendation seeks Cabinet's approval for leaseholders to be recharged their apportionment of the financial costs of the structural works to be undertaken. The flats comprised within Brewster House and Malting House are subject to two types of lease. A leaseholder has either a 'LBTH Lease' or a 'GLC Lease'. Both types of lease have been reviewed and contain clauses within them which enable the Council to recharge the leaseholders their apportionment of the cost of the structural works through the service charge.
- 14.11 It is the Council's position, in its capacity as landlord, that the structural works are recoverable. There will be no liability on the Council outside the terms of the lease as: -
1. There has been no damage caused to the premises demised under the various leases or to anything in them and any duty is excluded by the terms of the leases.
  2. There is no liability in negligence in respect to the original construction of the blocks as to date there has been no personal injury or damage to the flats.
  3. The Defective Premises Act 1972 does not apply as the works were completed before 1 January 1974.
- 14.12 The Council is under a fiduciary duty to council taxpayers to recover money that is lawfully recoverable. In order to cover these sums, the Council is also required to consult leaseholders on the proposed works in accordance with s20 of the Landlord and Tenant Act 1985 unless a dispensation has been obtained from the Upper Tribunal. Any failure to comply with these requirements will mean the amount of the recoverable contributions will be limited in accordance with sections 20 (6) and 20(7) of the Housing Act 1985 and Regulations 6 and 7 of The Service Charge (Consultations Regulations (England) 2003.
- 14.13 Cabinet will note that paragraphs 9.5 -9.7 of the report sets out the restitution package, financial assistance and support available to affected leaseholders to minimise disruption to their amenity. Further, paragraphs 11 and 12.8 also sets out the equalities implication and safeguarding considerations that the

Council will be undertaking to ensure compliance with the Public Sector Equality Duty.

14.14 Cabinet is advised that an Equalities Impact Assessments have been undertaken and that Residents Impacts Assessments have been completed and will continue to be assessed throughout the duration of the works. The assessments have identified vulnerable residents and devised a package of mitigating steps to address these specific needs. This demonstrates due regard has been given to those affected leaseholders with protected characteristics pursuant to the requirements of the Equality Act 2010.

14.15 The Council is the local housing authority within the meaning of the Housing Act 1985 and as such is specifically empowered to provide housing accommodation. The report details that the Council has also offered to voluntarily buy back affected flats although it is not under a legal obligation to do so. Any such voluntary buy back is authorised by section 120 Local Government Act 1972 which enables the Council to acquire land for the purposes of exercising the statutory housing functions contained in the Housing Act 1985.

14.16 The report details that the voluntary buy backs are to be funded by using a mixture of right to buy receipts and capital resources. Right to buy receipts must be applied in accordance with relevant legislation and guidance and particularly Local Authorities (Capital Finance and Accounting) (England) Regulations 2003. The 2003 Regulations permit the use of these receipts to fund capital expenditure such as the provision of affordable housing, subject to the conditions of any agreement entered into with the Secretary of State pursuant to section 11(6) of the Local Government Act 2003.

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## **Linked Report**

None

## **Appendices**

Appendix 1,2,3 Wilder Carter Clark Structural Appraisals  
Appendix 4 Arup Review of Structural Assessment and Proposed works  
Appendix 5 Porter Raper Value for Money Report  
Appendix 6 Curtins Survey report  
Appendix 7 Contract works programme  
Appendix 8 Equality Impact Assessment Checklist

## **Background Documents – Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012**

- NONE.

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