

# Mayor's Executive Decision Making



Friday, 9 September 2022

1. **3-5 ARNOLD ROAD: BUDGET**

3 - 16

**Contact for further enquiries:**

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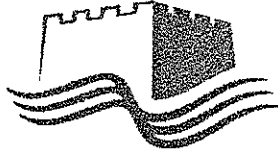
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<p><b>Individual Mayoral Decision Proforma</b></p> <p>Decision Log No: <u>302</u></p>	 <b>TOWER HAMLETS</b>
<p><b>Report of:</b> Ann Sutcliffe, Corporate Director, Place</p>	<p><b>Classification:</b> Exempt <i>Appendix</i></p>
<p><b>3-5 Arnold Road: Approval to increase project budget to enable build contract to be awarded</b></p>	

<b>Is this a Key Decision?</b>	<b>No</b>
<b>Decision Notice Publication Date:</b>	<del>(Report author to state date of decision notice – either individual notice or within the Forward Plan)</del> <i>N/A</i>
<b>General Exception or Urgency Notice published?</b>	<b>Not required</b>
<b>Restrictions:</b>	Contract sum should not be in the public domain until it is published on the Contracts Finder
<b>Reason for seeking an Individual Mayoral Decision:</b>	The contractor appointment is urgent to enable work to start on site before the planning consent for this scheme expires in December 2022. Approval for a budget increase to enable the contractor appointment in September means that this decision cannot wait until the next Cabinet meeting at the end of October 2022.

## EXECUTIVE SUMMARY

The site at 3-5 Arnold Road is part of the HRA new council homes programme. Planning consent for the development of 62 new homes for social rent and 5 business units on the ground floor on the site was granted in November 2019. When the council's Dynamic Purchasing System for contractors had been set up, the procurement of a build contractor commenced in August 2021.

As a result of changing market conditions, including rising inflation, increasing energy costs and a shortage of material and labour, the tender price for this contract was higher than estimated. The Employer's Agent has confirmed that in the current climate, this delivers value for money. The total scheme costs now exceed the approved budget of £24.351m, requiring an additional budget of £4.449m to be allocated and approved to enable the contract to be awarded and the development to start on site before the planning consent expires in December 2022.

To fund the additional budget requirement within the funding available within the HRA Business Plan, one of the approved schemes in the programme will

be removed and its budget allocation of £7.600m will be available for re-allocation. This will provide a funding source for the Arnold Road scheme.

Full details of the decision sought, including setting out the reasons for the recommendations and/or all the options put forward; other options considered; background information; the comments of the Chief Finance Officer; the concurrent report of the Head of Legal Services; implications for One Tower Hamlets; Risk Assessment; Background Documents; **and other relevant matters are set out in the attached report.**

## **DECISION**

The Mayor is recommended to:

1. Approve an increase in the budget for the development of 62 new homes for social rent and 5 business units at 3-5 Arnold Road by £4.449m to £28.800m to enable the build contract to be awarded
2. Approve the removal of the Gill Street scheme and associated budget of £7.600m from the HRA new council homes programme budget of £337.7m as approved by Cabinet in July 2022 and use of £4.449m for the Arnold Road scheme
3. Approval of the contract award to Jerram Falkus for the development of the site at 3-5 Arnold Road, for the agreed contract sum

## **APPROVALS**

1. **(If applicable) Corporate Director proposing the decision or his/her deputy**

I approve the attached report and proposed decision above for submission to the Mayor. I confirm that the Mayor and/or Lead Member have agreed to this decision being taken using this process.

Signed ...



..... Date 31 August 2022

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 ...2 September 2022

**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 2/9/22

**4. Mayor**

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

Signed ...  Date 07/09/22

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<b>Individual Mayoral Decision</b>  8 <sup>th</sup> September 2022	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Corporate Director, Place	<b>Classification:</b> Exempt annexe
<b>3-5 Arnold Road: Approval to increase project budget to enable build contract to be awarded</b>	

<b>Lead Member</b>	<b>Councillor Kabir Ahmed, Cabinet Member for Regeneration, Inclusive Development and Housing</b>
<b>Originating Officer(s)</b>	Jane Abraham – Interim Capital Programme Manager (Housing)
<b>Wards affected</b>	Bromley North
<b>Key Decision?</b>	No
<b>Reason for Key Decision</b>	This report has been reviewed as not meeting the Key Decision criteria.
<b>Forward Plan Notice Published</b>	Not applicable
<b>Exempt information</b>	
<b>Strategic Plan Priority / Outcome</b>	Strategic Plan 2022-2026  <b>Priority 2: Providing Homes for the Future</b>

### Executive Summary

The site at 3-5 Arnold Road is part of the HRA new council homes programme. Planning consent for the development of 62 new homes for social rent and 5 business units on the ground floor on the site was granted in November 2019. When the council's Dynamic Purchasing System for contractors had been set up, the procurement of a build contractor commenced in August 2021.

As a result of changing market conditions, including rising inflation, increasing energy costs and a shortage of material and labour, the tender price for this contract was higher than estimated. The Employer's Agent has confirmed that in the current climate, this delivers value for money. The total scheme costs now exceed the approved budget of £24.351m, requiring an additional budget of £4.449m to be allocated and approved to enable the contract to be awarded and the development to start on site before the planning consent expires in December 2022.

To fund the additional budget requirement within the funding available within the

HRA Business Plan, one of the approved schemes in the programme will be removed and its budget allocation of £7.600m will be available for re-allocation. This will provide a funding source for the Arnold Road scheme.

## **Recommendations:**

The Mayor is recommended to:

1. Approve an increase in the budget for the development of 62 new homes for social rent and 5 business units at 3-5 Arnold Road by £4.449m to £28.800m to enable the build contract to be awarded
2. Approve the removal of the Gill Street scheme and associated budget of £7.600m from the HRA new council homes programme budget of £337.7m as approved by Cabinet in July 2022 and use of £4.449m for the Arnold Road scheme
3. Note the funding sources for this scheme
4. Approval of the contract award to Jerram Falkus for the development of the site at 3-5 Arnold Road, for the agreed contract sum
5. Note the Equalities Impact Assessment as set out in Paragraph 4

## **1 REASONS FOR THE DECISIONS**

- 1.1 An increase in the project budget for the scheme at 3-5 Arnold Road is required to enable the build contractor to be appointed as soon as possible in order that start on site can be achieved before the planning consent expires in December 2022.
- 1.2 Funding for the additional budget requirement of £4.449m has been identified through the removal of an approved scheme in the HRA new council homes programme which has a budget allocation of £7.600m.
- 1.3 There have been significant cost increases during the past year including a rise in inflation, a surge in energy prices, an increase in the cost of materials following the pandemic and Brexit and an ongoing shortage of labour, which have resulted in higher tender prices than originally estimated.

## **2 ALTERNATIVE OPTIONS**

- 2.1 A refresh of the approved HRA new council homes programme is due to be presented to Cabinet in October 2022, where new schemes will be added and budget allocations adjusted within the overall budget envelope that is



affordable within the HRA Business Plan. However, with the planning consent for this scheme due to expire in four months, approval for an increase in the budget is required sooner than October 2022 to ensure the development of 62 new homes for social rent on this site can proceed.

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

- 3.1 The site of William Brinson House in Arnold Road is part of the council's new homes programme. Until 2018, the two storey 1970's building was used by Vibrance, a commissioned service provider, to deliver adult social care, before they were relocated to alternative, more suitable premises.
- 3.2 A planning application for the development of the council-owned site in Arnold Road was submitted and validated in September 2016 but was subject to a Judicial Review from neighbours in Tomlins Grove, which delayed the planning decision. The Judicial Review related to the process by which the daylight and sunlight impact was assessed.
- 3.3 In maximising the development potential of the site, there has been some impact on neighbouring properties in terms of their rights to light, for which compensation is payable. The process of negotiating compensation is almost complete. Any changes to the design at this stage would be likely to affect these negotiations.
- 3.4 In November 2019, planning consent was granted for the demolition of the existing building and construction of an 8 storey and 6 storey residential block to provide 62 new homes for affordable rent, comprising 16 x 1bed (26%), 14 x 2bed (23%), 20 x 3bed (32%) and 12 x 4 bed homes (19%), and 5 x B1 business units on the ground floor. The dwelling mix on this scheme provides more 4bed flats and less 2bed flats than is set out in the council's planning policy.
- 3.5 A condition of the planning consent is that the permission is implemented within three years of the date of the decision notice. This means that start on site must take place before 15<sup>th</sup> December 2022 or the planning consent will expire.
- 3.6 In June 2021, Cabinet approved a budget of £24.351m for this scheme, of which £22.646m was allocated for the new homes and £1.705m for the business units. The existing funding sources identified for this scheme are RTB receipts ((£7.305m)and HRA borrowing (£17.046m).
- 3.7 In parallel with the budget setting process, this scheme has been reviewed and approved through the council's capital governance process.
- 3.8 In August 2021, the process of procuring a contractor through the council's newly established Dynamic Purchasing System (P5644 DPS for Commissioning of Contractors for Housing, Education Regeneration and General Building Works, Lot A – iv) for contractors commenced.

- 3.9 Tender returns were received from four bidders on 22<sup>nd</sup> November 2021. Following evaluation of all submissions, on a 65:35 quality:price basis, and the Procurement Review Panel Tollgate 2 Contract Award Process, the contract was awarded to Jerram Falkus at the end of March 2022, with a contract sum within the approved budget of £22,741,054.
- 3.10 Following the contract award, Jerram Falkus advised the Council that due to rising inflation, increased energy and material costs, and labour availability affecting the building industry since tenders were submitted, they would be seeking additional inflation costs. Jerram Falkus also stated that they would not be able to accept the Council's revised terms and conditions.
- 3.11 Having sought legal advice, and in accordance with the council's procurement procedures, it was agreed at the Procurement Review Panel that Jerram Falkus would be asked to withdraw their acceptance of the contract award and each bidder would be given the opportunity to submit a revised bid with an inflation uplift.
- 3.12 The update was issued to the four bidders on 14<sup>th</sup> June 2022, with a return date of 27<sup>th</sup> June 2022. Two bidders informed the council that they would not be submitting a revised bid. The only bid received by the deadline was from Jerram Falkus. However, the Falkus bid was substantially qualified and was not capable of acceptance. Therefore, and in accordance with the procurement law it was disqualified from the process
- 3.13 A late submission was subsequently received through the portal on 4<sup>th</sup> July 2022 from Formation Group. However, this was disqualified because it was received after the published deadline.
- 3.14 Legal advice suggested that in the absence of suitable tenders following 2 attempts at a competitive process Regulation 32 of the Public Contracts Regulations 2015 allows the Council to move to the negotiated procedure without an advert and consider a single submission. Therefore, the Council approached Jerram Falkus to negotiate the terms of the contract as at the point the decision was made (before receipt of the late bid) Jerram Falkus appeared to be the only prospect of fulfilling the build requirements within the timescales afforded by the planning consent.
- 3.15 Following detailed examination of the Contract Sum Analysis, tender queries and responses, Jerram Falkus's tender price was confirmed and in excess of the approved budget of £24.351m this scheme.
- 3.16 The tender report from the Employer's Agent, Potter Raper, considered the submission, when compared with recently submitted tenders of similar size, delivers best value for the council.
- 3.17 The revised total scheme costs for this project, based on the tender price of £24.496m, has increased to £28.800m, requiring an additional £4.449m to be added to the current approved budget.

- 3.18 In July 2022, Cabinet approved a budget of £337.7m for HRA new council homes programme. Whilst this programme-wide budget has been allocated to specific schemes, a review is currently underway which will see some schemes swapped out of the programme. It is proposed that the additional budget requirement for this scheme is taken from the £7.600m allocated to Gill Street, which is funded by RTB receipts (£2.052m) and HRA borrowing (£5.548m).
- 3.19 To date, there has been spend of £848k on Gill Street for the feasibility and design stages for RIBA Stages 1-3. This spend will be expensed to HRA revenue.
- 3.20 Based on a start on site in October 2022, the development is due to complete at the end of November 2024.

#### **4 EQUALITIES IMPLICATIONS**

- 4.1 An Equalities Impact Assessment was carried out for the HRA new homes programme to identify and mitigate the impact on groups with protected characteristics and others. If the development of 62 new homes for social rent do not go ahead on this site, this will impact on overcrowded households and those living in temporary accommodation, many of which fall into one of the protected groups.

#### **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
  - Consultations,
  - Environmental (including air quality),
  - Risk Management,
  - Crime Reduction,
  - Safeguarding.
  - Data Protection / Privacy Impact Assessment.

#### **6 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 This report recommends the Mayor to approve an increase in the budget for the 3-5 Arnold Road development by £4.449m, from £24.351m to £28.800m to enable the build contract to be awarded. This increase in budget is proposed to be funded by the removal of the Gill Street scheme and associated budgets of £7.600m included within the existing HRA new council homes programme. As only £4.449m of the Gill street budget (£1.335m of

RTB receipts and £3.114m of HRA borrowing) will be required to fund the required increase to the 3-5 Arnold Road development, the remaining £3.151m budget (£0.945m of RTB receipts and £2.206m of HRA borrowing) will be available for re-allocation pending the MTFS capital refresh planned for the Autumn.

- 6.2 Overall, this will result in no change to the total capital HRA new council homes programme budget or the total funding of the programme.
- 6.3 To date, there has been spend to date of £848k relating to Gill Street scheme for the feasibility and design stages for RIBA Stages 1-3. This spend will have to be expensed to HRA revenue as the Gill Street Scheme is being removed with no actual asset(s) materialising.

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 The Council had 2 attempts at subjecting this scheme to open competition without success. Therefore, Regulation 32 of the Public Contracts Regulations 2015 allows the Council to negotiate with a single provider to arrive at a successful contract. The only proviso is that the overall specification of requirements remains substantially the same as was subjected to competition and this was the case here.
- 7.2 The Council is also required to demonstrate Best Value. The Council sought expert cost advice from Potter Raper Partners who confirmed that the final contract cost was one which was in line with similar schemes tendered recently. Also, an analysis of the cost application within the tender price was also undertaken showing that the bid is sustainable and within the bounds of that which one might expect following competition.
- 7.3 This report includes a restricted appendix. In the round the details in the appendix relate to the specifics of the Jerram Falkus agreed contract price. Jerram Falkus' commercial interests may be damaged if this was released into the public domain at this stage which could lead to legal action against the Council. The information is exempt information for the purposes of the The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and therefore the public may be excluded as on balance the public interest in knowing the information is outweighed by the public interest in maintaining the exemption.

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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- NONE.

#### **Appendices**

- Exempt Annexe (Exempt Due to Paragraph 3 (Information relating to the financial or business affairs of a particular person (including the authority)) of Part 1 Schedule 12A of the Local Government Act 1972

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

- NONE

**Officer contact details for documents:**

N/A

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

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