

Report for: Cabinet 16 March 2021

Item number: N/A

Title: Contract variation report for Broadwater Farm District Heating works

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Lead Officer: David Sherrington, Director of Broadwater Farm, Homes for Haringey

Ward(s) affected: West Green

Report for Key/
Non Key Decision: Key Decision

1. Describe the issue under consideration

- 1.1. Following structural surveys in 2017, serious issues were identified on 11 blocks in the Broadwater Farm estate. To remove the risk of collapse from a gas explosion, this required the disconnection of gas to 10 blocks and the installation of an estate wide district heating system. The contract for these works was awarded in 2018 to Engie Ltd at the value of £12.6m. The first phase, connection of homes to a temporary district heating network, was completed on time in October 2018.
- 1.2. The blocks are now in the process of being connected to a permanent district heating network. In 2019 the scope of the works was substantially increased to incorporate other essential improvements including completing works to bring the units up to the Decent Homes Standards. By combining these, contracts savings could be realised and the quality of outcomes for residents improved. The improvements included new kitchens and bathrooms were required. This required a variation to the contract which was approved by Cabinet in October 2019.
- 1.3. While the early stages of the works progressed well, there have now been significant delays incurred due to the ongoing COVID-19 pandemic. Due to the first national lockdown, works ceased fully in March 2020 for a period of 11 weeks and internal building works did not recommence for 17 weeks. Changes to working practices, social distancing and access issues have affected the sequencing and efficiency of works, causing further delays. By mutual agreement between Homes for Haringey and the Contractor, the works were demobilised on the 24 March following the government announcement of the national lockdown on the 23 March.

- 1.4. This report seeks Cabinet approval for an extension of £466,805 to the contract to a total of £18,597,977. £363,786.00 of the variation sum relates to ongoing contractual and legal negotiations and therefore further approval will be delegated to the Director of HRP, in conjunction with Director of Finance, once the negotiations have concluded.
- 1.5. In addition to the £466,805, Cabinet is requested to approve a contingency sum in the EXEMPT report. Full details of the contingency and full contract sum can be found in the exempt section of the report.
- 1.6. This report also seeks Cabinet delegation of approval of additional consultancy fees of £125,196.75 to Director of HRP, in conjunction Director of Finance. This figure is subject to further negotiation and legal justification.
- 1.7. A full breakdown of the sums is included in Section six.

2. Cabinet Member introduction

- 2.1. The approval of these additional works and variations allows Homes for Haringey to complete essential works to provide a new district heating system and home improvements on the Broadwater Farm estate. The project has already delivered a new district heating system, which replaced unsafe gas installations, along with essential works to kitchens and bathrooms required to ensure that the units meet the Decent Homes standard. The variation includes further essential works related to fire safety. The overall project will contribute to achieving the Borough Plan objectives for improving the quality of the Council's housing stock and reducing carbon through decentralised energy networks as well as delivering essential safety works.

3. Recommendations

It is recommended that Cabinet:

- 3.1. Approves the variation of the District Heating contract with Engie LTD of an additional £466,805, noting that the final amount to be paid in respect of £363,786 prolongation and, loss and expense, will be subject to approval by the Director of Finance. More details of the variations required are set out in sections 6.8 to 6.11 of this report
- 3.2. Delegates the approval of a maximum additional consultancy fees of £125,196.75 **to the Director of HRP and Director of Finance, as this is** subject to further justification and legal review. These are as set out in paragraph 6.12 of this report.
- 3.3. Approves the contingency sum as disclosed in the exempt report and related consultancy fees.
- 3.4. Agrees not to seek to recharge leaseholders their proportion of the cost of these works.

4. Reasons for decision

- 4.1. The works have progressed well and phase one of the original contract, the disconnection of gas boilers and construction of a temporary district heating system, was delivered on time avoiding a potential decant of nine blocks, despite a very challenging deadline.
- 4.2. The second phase has delivered a new district heating network and incorporated additional works, such as safety improvements and the installation of new kitchens and bathrooms, resulting in enhanced outcomes and reduced disruption for residents. The inclusion of these works resulted in significant savings by making use of the existing contractor relationship and achieving rapid mobilisation, less duplication and economies of scale. A full explanation and breakdown can be found in the previous cabinet report dated 8 October 2019 and further explanation is provided in Section 6 below.
- 4.3. The impact of COVID-19 on the project has been significant. Work was initially halted during the first national lockdown in March 2020 and following the lockdown, works could only proceed with significant changes to working practices, slowing progress and incurring additional costs. It was essential to establish safe systems of work to protect residents, site operatives and Council staff from the risks posed by the ongoing pandemic. The additional measures implemented meant that less operatives could be accommodated in working spaces, thereby reducing productivity, and increasing the period required for the works. For example, only one person could work in a flat at any given time, whereas before several people would be working alongside each other. 'No-access' instances (to flats) also significantly increased, restricting the ability to carry out essential works in flats and leading to 'out of sequence' working. Additional PPE requirements also incurred additional costs. A detailed breakdown of the impact on costs can be found in Appendix A.

- 4.4. The current public health situation is still impacting the delivery of these works – challenges remain regarding the inability to access homes and the potential risks of further cessation of works if tighter restrictions are introduced. A contingency sum of £EXEMPT has therefore been included in the contract variation amount to mitigate against the risk of further delays.
- 4.5. The additional contingency reflects an allowance considered to be appropriate for ongoing risk, including further ‘no access’ issues. The figure is based on analysis of the project costs to date the contractor is not party to this sum and it will only be expended if a contractual case can be made by the contractor. The figure provided in the exempt section should be considered a ‘worst case’. Further explanation is provided in section 6 below.
- 4.6. Additional costs have also been instructed on the contract to undertake essential safety works, including fire stopping, which would have delayed the main works if not addressed in a timely manner. Undertaking these works as part of the contract also resulted in time and cost savings as the works could be completed in sequence with the main contract. For example fire stopping in some areas was undertaken where new connections to the district heating system identified areas where fire stopping was required.
- 4.7. As well as works costs, management and consultancy fees have increased. This includes a percentage increase in line with the contract costs and further additional fees associated with works to de-mobilise the site during the first lockdown, fees to re-mobilise works, fees to ensure Covid safe working practices consistent across all HfH capital works were adopted, and fees associated with significant levels of no-access and additional survey work.

5. Alternative Options Considered

- 5.1. Officers considered the option of re-procuring the works under a new contract. This was discounted as it would lead to delays in the conclusion of the current works. This delay to the main contract would have increased costs by more than the additional amount in the variation of the contract. There would be an increased risk of quality being compromised and potential liability issues should any defects become apparent in the future.
- 5.2. The option of refusing the claims for an extension without terminating the contract has been considered. This is not likely to be contractually feasible, given the circumstances in which the additional costs have been incurred.
- 5.3. The option of a variation to the existing contract is therefore the preferred method of completing the works in the most expedient manner, at the lowest cost and whilst guaranteeing quality.

6. Background information

- 6.1. In the summer of 2017, Homes for Haringey initiated structural surveys on the Broadwater Farm estate. The surveys were commenced following a letter from the Ministry of Housing, Communities and Local Government (MHCLG) asking local authorities to check their records regarding large panel system buildings to ensure buildings passed the required standards.

- 6.2. The Council commissioned structural surveys of all buildings on the estate. Results were received in December 2017 which identified that 11 of the blocks failed structural safety standards. Ten of these blocks had a piped gas supply, meaning that the buildings could be at risk of collapse in the event of a gas explosion.
- 6.3. It was necessary to disconnect the gas supply to these buildings, and install alternative heating systems, to prevent all residents in the affected buildings needing to be re-housed. Some preliminary emergency works (Phase 1) were carried out to reduce the immediate risk to buildings, including removal of gas cookers and installation of interrupter valves. Following an options appraisal, it was decided to install a new district heating system in two stages: Firstly, a temporary system was introduced, installing new pipework and connecting homes to temporary boilers in each block – this allowed residents to remain in their homes as the gas supply was removed (Phase 2). Ultimately, a permanent system was introduced and linked to an upgraded energy centre (Phase 3). A more detailed explanation is provided in the previous Cabinet Report dated 14 August 2018.
- 6.4. The contract for the new district heating system was awarded in August 2018 to Engie LTD. The Phase 2 works, disconnecting gas from 725 flats and re-connecting them to a district heating system, was completed in six weeks. The gas supplier Cadent, had set a deadline of October 2018 to disconnect the gas, and this was met thereby avoiding the need for a full decant and rehousing.
- 6.5. As detailed in the Cabinet report dated 8 October 2019, the opportunity was taken during the second stage of the works to deliver additional improvements in parallel with the heating works. As explained in Section 4 above, this approach realised savings and enhanced the outcome of the scheme while reducing disruption to residents. This required a variation to the existing contract of £5,531,172 which was approved at the October 2019 Cabinet meeting. The key variations were as follows:
- Inclusion of kitchen and bathroom upgrades
 - Inclusion of full upgrade of cold-water systems
 - Upgrade to the existing energy centre
 - Additional oil costs
 - Fire stopping to flats
 - New flooring in flats
 - Additional heating pipework
 - Various other minor additions
- 6.6. Many of the bathrooms and kitchens on the estate were not up to 'Decent Homes' standard and were due for renewal in the near future. As the fittings needed to be removed to enable the heating works to be completed, it made sense not to replace the old fittings only to then replace them at a later date. The costs of removing and refitting existing kitchens and bathrooms was estimated to be £316,000 (153 kitchens at £1500 per unit and 116 bathrooms at

£750 per unit), this could instead be put towards the cost of fitting new ones. Additional savings would have been made from using an existing site and contract set up.

- 6.7. These works were progressing well until March 2020 when the nationwide lockdown was introduced in the UK, causing the upgrades to be immediately halted. Work on the programme was suspended on 24 March 2020.
- 6.8. When operatives could return to the site, more stringent working practices were required which incurred additional costs. The requirements associated with social distancing meant that the sequence of works had to be amended, resulting in further delays to the planned programme.

6.9. The full impact of COVID-19 can be summarised as follows:

- Full cessation of works on 24 March 2020. Third party legal advice is being sought regarding the basis of the agreement to cease works.
- External works recommenced on 8 June 2020 (11-week interruption) and internal works recommenced on the 20 July 2020 (17-week interruption). This recommencement was instructed by the Client on condition of new COVID secure working practices being agreed with the Contractor.
- The need for social distancing reduced the number of operatives who could work on site, affecting the sequencing (e.g. different trades could not work alongside each other in the flats). The standard programme pre COVID was up to 15 days per unit, this was increased to 20+ days with the new working arrangements.
- The inability to access some residential units (due to residential refusal or shielding) meant that the sequence of works needed to be amended, resulting in additional delays. As of the 15th July, there were 360 attempted visits listed on the 'no access' tracker, relating to 285 individual properties. The project team in the Council went to huge lengths to reduce this and access has been obtained to all units.
- Additional personnel, including COVID-19 Welfare Officers, were required to manage new practices, ensure compliance with social distancing requirements and enhanced health and safety supervision.
- Revised practices required additional checks on site, leading to further costs.
- The site set up and to be significantly revised before remobilisation, this including changes to the office layout, one-way systems, additional toilets and welfare facilities, etc.

6.10. The resulting variation due to these impacts is set out in the table below.

Item	Value	Detail
1. Completion of existing contract	£83,019.00	Following the first lockdown a number of emergency works have been instructed that have increased the cost of the contract. These related to essential fire stopping and remedial works between bathroom and kitchen connections to the main stacks. These works were essential to allow the contract to continue and these works have increased the cost of the contract by £83,019.
2. Survey related building works	£20,000.00	<p>This is a maximum sum relating to essential reinstatement works (making good) following intrusive Fire Risk Assessment survey works in flats.</p> <p>Using the main contractor to undertake these repairs resulted in a quicker resolution and a better outcome for residents. Some of the reinstatement works needed to be completed before the heating works could commence, so delaying them would have affected the sequence of works leading to additional delays and costs</p> <p>The works were instructed on maximum sum basis as the works required depended on the findings of ongoing surveys, so it was not possible to define a scope and an appropriate allowance was made. The final sum will be less than the full £20,000 which represents a worst case scenario.</p>
Total	£103,019.00	
4. Prolongation	£363,786.00	<p>Losses and expenses incurred by Engie Ltd as a direct result of the COVID-19 pandemic.</p> <p>The two parts to this claim:</p> <ol style="list-style-type: none"> 1. The costs incurred due to the cessation of works during the first lockdown. £ 105,098 2. Costs incurred due to revised working

		<p>practices and delivery challenges posed by COVID-19.</p> <p>£ 258,688</p> <p>The final amount is subject to the ongoing negotiations and contractual justifications. The position is currently being reviewed contractually and legally. The sum has been calculated based on the maximum that the Contractor could claim if the case is proven and allowance needs to be made to provide a basis for payment in this event. These negotiations are underway in parallel to negotiations on other HfH capital works contracts to ensure consistency.</p>
Total (inc. prolongation)	£466,805	

- 6.11. A full breakdown of these costs is included in Appendix A.
- 6.12. Additional fees have also been incurred because of the prolongment of the contract and additional works required associated with the demobilisation of site and remobilisation of works in line with Covid safe requirements. Consultancy and due diligence works had to continue despite works not progressing on site, and the delays caused by the unprecedented scenario resulted in detailed contractual investigations being undertaken. The total maximum increase for consultancy and management fees will be £125,196.75. These are subject to further legal and contractual review by the project team.
- 6.13. The breakdown of these fees is as follows:

Contract Works Extension	
Extended value of Engie Contract to £18,523,464, fees based on rate of 3.25% of £466,805 uplift.	£15,171.20
Additional project programme periods	
Additional works during 4-month stoppage period including demobilisation, re-mobilisation, Covid safe risk assessments development and approval	£47,158.75
Extended programme 3 months	£31,433.42
Historic 'No access' impacts	£31,433.42
Total Fee Increase	£125,196.75

7. Leasehold implications

- 7.1. As a result of applications made under the Right to Buy legislation, at the time of the surveys there were 116 leaseholders living in properties affected by the works detailed in this (and previous) reports. This number has subsequently decreased following the Council's acquisition of some of the former leasehold properties within Tangmere House.
- 7.2. Under the terms of their lease, the lessee is required to make a contribution towards the costs of maintaining in good condition: The main structure; the common parts; and common services of the building. These works would be covered by that contribution obligation. Such contributions are recovered by the freeholder (the Council) through the lessees' service charge account.
- 7.3. At its meeting on 14 August 2018 when awarding the initial contract, Cabinet decided that leaseholders should not be recharged for the District Heating works, noting that unrecovered charges would be no greater than £2m.
- 7.4. The recommended variation to the contract will not lead to unrecovered charges to leaseholders increasing beyond £2m.

8. Contribution to strategic outcomes

- 8.1. The works are being carried out in line with the Borough Plan Outcome three, which states: 'We will work together to drive up the quality of housing for everyone'. In particular the following delivery priority: Deliver capital works programme.
- 8.2. The works contribute towards Objective 3 of the Haringey Housing Strategy (2017-2022), which identifies that a key priority is to "drive up the quality of housing for all residents".

9. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance

- 9.1 In August 2018, cabinet approved a total contract sum of £12.6m including fees.
- 9.2 Additional works were identified and in the cabinet report of October 2019 additional £5.5m was approved, bringing the total sum to £18.1m including fees.
- 9.3 Cabinet, by this report, is asked to approve a further variation of this contract up to £0.5m, excluding contingency disclosed in the exempt report.
- 9.4 There is a further consultancy fees of £0.13m representing 27% of the additional contract sum for approval.
- 9.5 Within the £0.5m additional contract sum is £0.4m relating to losses and expenditure incurred by contractor due to COVID. This is subject of ongoing negotiations and contractual justifications.

- 9.6 The £0.4m should only be disbursed where legal team is satisfied that the terms of the contract justify this and subject to approval of director of HRP and Director of Finance.
- 9.7 These additional works cost brings the total cost of contract to date to £18.6m. These is provision in the 2020/21 BWF capital budget and current MTFS for these costs.
- 9.8 No contribution to the cost of the project is expected from leaseholders in line with the August 2018 agreement when the original contract was awarded.

Strategic Procurement (SP)

- 9.9 Strategic Procurement support this request to for a variation of the BFW District Heating Contract. The original contract was approved by Cabinet in 2018 for a value of £12,600,000.
- 9.10 In October 2019 Cabinet approved a further variation of £5,531,172. This report requests a final variation of £466,805 (plus £125,196.75 associated consultancy fees as outlined in paragraph 6.12) to the contract for Engie Limited for additional Works bringing the final account sum to £18,523,464, excluding contingency.
- 9.11 Both recommendations are in compliance with CSO10.02.1 Variations and Extensions, pursuant to PCR Regulation 72(1) (b) (ii) as they do not exceed 50% of the value of the original contract.

Legal

- 9.12 The Head of Legal and Governance has been consulted in the preparation of this report.
- 9.13 It is open to the Council in the circumstances outlined in this report and that considered by Cabinet on 14 August 2018 not to seek to enforce leaseholders' obligations to pay charges under the terms of the lease.
- 9.14 The variations which the report relates to comply with Regulation 72(1)(b) of the Public Contracts Regulations 2015 (as amended).
- 9.15 The Head of Legal and Governance sees no legal reasons preventing Cabinet from approving the recommendations in the report.

Equality

- 9.16 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
 - Advance equality of opportunity between people who share protected characteristics and people who do not

- Foster good relations between people who share those characteristics and people who do not.
- 9.17 The three parts of the duty apply to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. The first part of the duty applies to marriage and civil partnership status only.
- 9.18 The proposed decision is to approve a contract extension for Broadwater Farm District Heating works. This extension is required due to the impact of the COVID-19 pandemic.
- 9.19 Those most affected by the decision will be Homes for Haringey tenants, among whom BAME communities, women, and those with long-term health conditions and/or disabilities are overrepresented relative to the population of Haringey. Tenants can expect to benefit from upgrades and measures to improve safety. Leaseholders will not be recharged their proportion of the cost of these works under these proposals.
- 9.20 All contractors will be required to carry out their work in line with public health guidance, including with regard to access to residential units where residents are shielding or vulnerable, in which categories those with protected characteristics, such as disability and age, feature disproportionately.

10. Use of appendices

- 10.1. Exempt report with exempt financial information as set out at Schedule 12A to the 1972 Act – paragraph 3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information).

11. Local Government (Access to Information) Act 1985

- 11.1. The background papers relating to this report are:

Cabinet meeting 14 August 2018 – award of contract:

<https://www.minutes.haringey.gov.uk/documents/g8908/Public%20reports%20pack%2014th-Aug-2018%2018.30%20Cabinet.pdf?T=10>

Options appraisal on solutions (see 6.5):

https://www.homesforharingey.org/sites/default/files/broadwater_farm_heating_and_hot_water_options_appraisal.pdf

Structural reports on blocks: <https://www.homesforharingey.org/your-neighbourhood/safety-estates/broadwater-farm/broadwater-farm-reports-june-2018>

Cabinet meeting 8 October 2019 - Contract Variation:

<https://www.minutes.haringey.gov.uk/documents/s111661/Cabinet%20Report%20-%20BWF%20contract%20extension%20October%20Cabinet%20Final%20with%20tables%20version.pdf>

