

Report for: Cabinet – 15 June 2021

Title: Response to Scrutiny Review of Noel Park Major Works Programme

Report authorised by : David Joyce, Director of Housing, Regeneration and Planning

Lead Officer: Robbie Erbmann, Assistant Director of Housing

Ward(s) affected: Noel Park

Report for Key/

Non Key Decision: Non Key

1. Describe the issue under consideration

This report recommends Cabinet responses to the recent Housing & Regeneration Scrutiny Panel (HRSP) review into the Noel Park major works programme which was presented to Overview & Scrutiny Committee on 15 March 2021.

2. Cabinet Member Introduction

Haringey Council has made a strong commitment to improve the homes of residents on the Noel Park Estate. When they were first put in place, the bathroom extension “pods” added to the rear of hundreds of homes on this historic estate marked a clear improvement in the quality of the space that residents lived in. Over the years, however, it has become clear that they are now well beyond their natural lives and urgently need replacement.

I welcome this thorough and inclusive Scrutiny review that ensured the views and feelings of leaseholders were heard and their concerns fully reflected in the Panel’s report.

Since the review and the report were completed, there have been several important further steps towards balancing the twin objectives of resolving leaseholder concerns and ensuring necessary works are carried out as soon as possible. The majority of the Panel’s recommendations mirror steps already being taken and in my view should be agreed on this basis.

3. Recommendations

Cabinet is recommended to:

- 3.1. consider the recommendations of the Overview and Scrutiny Committee (OSC) and the Housing and Regeneration Scrutiny Panel (HRSP) attached as Appendix 1.

- 3.2. agree all the HRSP recommendations, except numbers 1, 12 and 20, for the detailed reasons set out in section 6.3 of this report.

4. Reasons for decision

The Overview and Scrutiny Committee has the Constitutional power to *make reports and recommendations to ...the Cabinet ... in connection with the discharge of any functions* for its consideration.

5. Alternative options considered

The Cabinet is committed to considering and responding to Scrutiny reviews. No alternative options were considered.

6. Background information

- 6.1. A major works programme is underway on the Noel Park Estate which includes replacement of prefabricated bathroom “pods” from the 1970s with new build modular extensions. Other works include replacing roofs, repairing brickwork and repairing or replacing windows and doors. The estimated cost of the whole programme of works to 243 properties is over £21 million. There are 77 leasehold properties affected and consultation to date has focused extensively on the financial impact on leaseholders. The average cost of the pod replacement works is c.£55,000 for each property with a pod. Leaseholders have collectively raised over 110 questions about these proposed major works. The Frequently Asked Questions document on the Homes for Haringey website is a good source of detailed information about the programme and is referenced in section 10 below.
- 6.2. The HRSP review report [see Appendix 1] describes the review process undertaken, the findings of the panel and the recommendations made to Cabinet which were endorsed by Overview and Scrutiny Committee on 15 March 2021.
- 6.3. Each recommendation is set out below in *italics* with officer comments and reasons given for the recommended Cabinet response in each case below.

SECTION 20 NOTICES	
1	<i>That an investigation be undertaken as to why responses to leaseholder questions submitted after receiving the Section 20 notices in September 2020 were not answered in full or in good time. This investigation should be conducted by an independent party and published with recommendations for improvement.</i>
	The Section 20 statutory consultation process involves the Council as landlord providing a summary of the works to be charged for and their estimated cost. Then the leaseholders are entitled to make observations on the proposed works and the estimated cost. The leaseholders are not legally entitled to seek further particulars of the works and cost.

	<p>Where leaseholders raise questions in response to Section 20 Notices, officers consider whether the information requests should be treated as Freedom Of Information (FOI) requests, Subject Access Requests (SAR) or general correspondence.</p> <p>In this case, there was a very high volume and complexity of questions from leaseholders, with many questions repeated multiple times, giving officers the impression that leaseholders had organised collectively to ask the same questions. Were these questions to have been treated as FOI requests, the Council would have been entitled to refuse to answer them under Section 12 of the FOI Act.</p> <p>HfH worked hard to consider and respond to hundreds of observations and questions raised by Noel Park leaseholders through the Section 20 process. Although some responses took a long time to finalise, HfH produced a Frequently Asked Questions (FAQ) document by the end of January 2021 that gave detailed answers to over 110 questions. This approach was considered more efficient than replying to each leaseholder individually when so many questions were identical.</p> <p>Officers telephoned all the leaseholders who sent detailed Section 20 observations to ensure they had seen the FAQs and had the opportunity to raise any issues they felt remained outstanding.</p> <p>HfH apologised in writing and by making telephone contact with the respective leaseholders regarding the time it took to answer all their questions. The failure to meet usual timescales for responding to correspondence reflects the volume and complexity of questions raised in this instance, not a wider failure by HfH to respond to enquiries.</p> <p>The Council and HFH have held a ‘lessons learned’ session on the Section 20 process relating to this programme as part of our commitment to learn lessons and improve future service responses. Given the questions raised were ultimately dealt with properly and answered fully, and there is a clear ongoing process of review and learning underway, officers recommend that an independent investigation is an unnecessary additional expense and so the HRSP recommendation is not agreed.</p>
<p>2</p>	<p><i>That a review takes place on the consultation and engagement process with residents that is used in circumstances where the Council has a QLTA in place. The Panel emphasised that high level, comprehensive, meaningful engagement with residents should always be the starting point and was concerned that the QLTA established through the LCP Framework had enabled a curtailed and inadequate consultation period of 30 days.</i></p>
	<p>It is important to note that the Section 20 process was followed correctly in awarding this Qualifying Long Term Agreement, so it is misleading to suggest that the process was curtailed and inadequate.</p> <p>Of course, the Council could choose to extend consultation on any proposed</p>

	<p>contract procurement beyond the minimum legal requirement and there may be very good reasons to do so in some circumstances.</p> <p>It would have been helpful if the Panel had given specific examples of best practice approaches to QLTA consultation (e.g. from other councils or social landlords) that the panel sees as better than the approach taken in this case.</p> <p>A review of resident engagement is to be included in the housing service review programme in pursuit of the proposed insourcing of HfH. Officers thus recommend that this HRSP recommendation is agreed and fulfilled through the proposed housing service review.</p>
CONSULTATION AND ENGAGEMENT	
3	<i>That Freedom of Information requests should be responded to without any interference or filtering through political offices.</i>
	The Council's executive function, including the Leader and Cabinet Members, have oversight of compliance with FOI processes and are quite properly informed of important FOI requests. The intention is not to give an opportunity to change the responses, rather to ensure Executive Members are aware of important information being released. Given responses are not directly influenced or approved by elected politicians, Officers recommend that the recommendation is agreed .
4	<i>That a thorough review takes place in relation to how the Council and Homes for Haringey respond and engage with leaseholders.</i>
	A review of resident engagement is to be included in the housing service review programme in pursuit of the proposed insourcing of HfH. Thus there is no need to commence a separate process in response to this HRSP recommendation. On that basis, the recommendation is agreed .
MAINTENANCE OF PROPERTIES	
5	<i>That independent surveys of leaseholder and shared tenure properties are undertaken by external surveyors, funded by the Council.</i>
	Ridge and Partners LLP have been carrying out bespoke surveys of leaseholder properties on Gladstone Avenue in January, February and March 2021 to clarify the scope of works and enable more accurate cost estimates to be made for each leasehold property. These are independent of HfH, the Council and the contractor (Engie Regeneration Ltd). Therefore, officers recommend that this recommendation is agreed on the basis that independent surveys by external surveyors are already being provided.
6	<i>That fully evidenced assurance is provided to leaseholders to demonstrate that BOPAS accreditation will enable mortgage borrowing on the refurbished properties. This evidence to be provided to leaseholders in advance of any binding decision and prior to any works being commissioned or commenced.</i>
	Details of the BOPAS scheme were provided to HRSP in December 2020 and are available to all affected leaseholders and will be made available as

	assurance for mortgage lenders on request. Officers consider the evidence already provided to be sufficient to give confidence that mortgage lenders will be satisfied by the BOPAS assurance. Therefore, officers recommend that this recommendation is agreed on the basis of assurance evidence already provided.
7	<i>That full assurances are provided in writing in relation to the contractors use and application of cladding materials on the pod extensions. A full separate cladding report to be written and presented for sign-off to the council's fire officer and to building control before any works commence. An assurance must be provided to leaseholders that they will not be held financially liable if cladding needs to be removed or replaced at any point in the future.</i>
	A full set of detailed technical specifications of the cladding materials were provided in the pack for HRSP in December 2020. They made it clear that the proposals were to use rockwool cladding which has an A2 fire safety rating. (Under the Euroclass rating system, category A1 products are “non-combustible”, A2 are of “limited combustibility”, and categories B to F are varying degrees of “combustible”.) Building Control approval will be signed off in the usual way. The Council has already stated that it will guarantee the cladding for 12 years in the unlikely event that any additional costs arise following completion. Therefore, officers recommend that this recommendation is agreed on the basis of standard documents to be provided to Building Control and the Council's Health and Safety team.
8	<i>That any works on properties on the Noel Park estate are subject to the approval of LBH building control in relation to standards and that the London Fire Brigade should be consulted with regard to fire safety of any external pods.</i>
	All HfH major works comply with Construction Design Management rules, health and safety policy and building regulations. Building Control approval will be signed off in the usual way and pods included in regular LFB liaison. Therefore, officers recommend that this recommendation is agreed .
ESTIMATED COST OF MAJOR WORKS	
9	<i>That it is established how estimates for pod replacement and other works have escalated over the time-period between purchases of the properties and the S20 notices in September 2020.</i>
	A full detailed explanation of the increases in cost estimates since 2012 to the September 2020 estimates was provided in evidence to the Panel session in December 2020. Officers believe that the evidence provided demonstrates that cost inflation broadly reflects wider construction industry cost inflation over this period in terms of the manufacturing of the modular extensions. There are additional costs in relation to asbestos removal due to the decision for safety reasons to remove asbestos in situ prior to craning the old pod over the property, whereas in 2012 the pilot pod replacement works involved asbestos removal off-site. An update on clarification of the scope of works and thus estimated costs and charges is now available following the

	completion of Ridge surveys of leasehold properties. Officers recommend that this recommendation is agreed on the basis of the revised estimates and updated Section 20 notices now available.
10	<i>That a review is undertaken to establish whether resale packs supplied to leaseholders when purchasing their properties were complete and correct. The review must clearly establish the facts about what information on expected costs, including any specific figures, had been provided to leaseholders in their sellers' packs or at any other point during the purchase process. The review should include establishing what information was provided to leaseholders who are now liable for costs relating to neighbouring properties in the same building.</i>
	At the HRSP session, the interim Executive Director of Property for HfH made a commitment to investigate any cases reported to him of inaccurate or inconsistent resale packs. In light of this recommendation, HfH have commenced an internal review of Noel Park resale packs to ensure accuracy and consistency going forward. Officers recommend that this recommendation is agreed on the basis of HfH's review underway now.
11	<i>That an urgent review is carried out on the hardship cap policy relating to leaseholder liabilities for major works. Consideration must be given to how such a revised policy could be applied to the Noel Park major works on a case-by-case basis taking into account a range of factors including the outcome of the review referred to in Recommendation 10.</i>
	A consultation on enhanced repayment arrangements for leaseholders is underway, following Cabinet approval in December. Officers recommend that Cabinet considers the existing hardship cap policy alongside the revised payment arrangements related to financial hardship scheduled to be approved at the July Cabinet meeting. On this basis, the recommendation is agreed .
12	<i>That the cost of the removal of asbestos in any of the resident leaseholder properties be borne by the freeholder.</i>
	Part of the pod replacement cost includes removal of existing materials containing asbestos prior to the old pod being removed from site and the new modular extension being installed. The costs associated with all aspects of the pods will be addressed when the procurement contract comes to Cabinet in July. Partially Agreed .
NEXT STEPS AND ALTERNATIVE OPTIONS	
13	<i>That round-table discussions take place with the Leader of the Council, Council officers and the leaseholders where all options for the replacement bathroom pods, as proposed by leaseholders, are on the table including full costings. This should include the consideration of permanent traditionally built extensions or the installation of internal bathrooms as alternatives to the</i>

	<i>modular pods.</i>
	Discussions have been ongoing with the leaseholders since November 2020. The Leader at that time (Cllr Ejiofor) invited all affected leaseholders to an online meeting in February 2021, chaired by Catherine West MP, to discuss their concerns and committed to further consultation before the contract award for works to these properties is brought to Cabinet for approval. Officers recommend that this recommendation is agreed on the basis that the process began in February 2021 and a commitment has been made to consult further prior to the scheduled July Cabinet decision on award of the phase 2 contract.
14	<i>That a timetable for the talks is agreed and published within 30 days of these recommendations being adopted.</i>
	As above, Officers recommend that this recommendation is agreed on the basis of consultation already underway, intended to conclude prior to the scheduled July Cabinet decision on award of the phase 2 contract.
15	<i>That any formal decisions to proceed with any alterations to the affected properties should be deferred until such time as negotiations between the relevant parties have been concluded.</i>
	As above, we have committed to further consultation before the contract award for works to these properties is brought to Cabinet for approval, scheduled for June. However, it is important to commence works soon, given the level of disrepair, so deferring the contract award indefinitely would be ill advised. Officers recommend that this recommendation is agreed on the basis of deferral only to July Cabinet or a Leader's signing before the end of July at the latest.
16	<i>That the discussions between the Council and HfH and individual leaseholders over the specific requirements of their properties are included in these negotiations. This should include consideration of whether the additional major works are necessary in individual cases and removing them from the programme where appropriate.</i>
	The recent bespoke property surveys carried out by Ridge and Partners LLP now form the basis for decisions about which works are necessary in each case. Whilst it would not be appropriate to discuss or negotiate individual cases in the collective on-line consultation meeting arena, it makes sense to consult on broad principles to be then applied by removing unnecessary works in individual cases (such as windows and doors in fair condition). On this basis, Officers recommend that this recommendation is agreed .
17	<i>That the formal roundtable talks should be minuted and outcomes jointly agreed between the parties.</i>
	As above, Officers recommend that this recommendation is agreed on the basis of the leaseholder consultation meetings already in train.
18	<i>That where costs have escalated well beyond the estimates previously</i>

	<i>provided to leaseholders and through no fault of the leaseholders, then a compromise on costs should be reached through the above round-table discussions. Any revision of costs should take into account the financial circumstances of the leaseholder residents.</i>
	As above, Officers believe that the evidence provided demonstrates that cost inflation broadly reflects wider construction industry cost inflation over this period in terms of the manufacturing of the modular extensions. Nevertheless, the Council and HfH wrote to leaseholders on 7 May issuing revised Section 20 Notices and setting out proposals to adjust charges in some cases, subject to consultation and reaching full and final settlement terms in each case. Officers recommend that this recommendation is agreed on the basis that this consultation is now underway and should conclude prior to the scheduled contract award decision at July Cabinet.
19	<i>That a formally constituted Steering Committee, with representatives from tenants, leaseholders and the Council with joint representation, be established to oversee and monitor contract delivery. The Steering Committee should meet regularly as agreed throughout the course of the contract to receive ongoing reports from project managers and contractors in order to monitor delivery, compliance, timetable, budgeting and any other relevant matters.</i>
	HfH has already proposed setting up project steering groups with residents on large major works programmes of this kind. This would not be a formally constituted Council Committee, it would be an engagement method (mirroring best practice in other authorities), not a decision-making body. Thus Officers recommend that this recommendation is agreed on the basis of HfH's commitment to set up a residents' project steering group.
CONTRACTS AND PROCUREMENT OVERSIGHT COMMITTEE	
20	<i>That a standing Contracts and Procurement Oversight Committee is established drawing on best practice from other authorities. The Cabinet should report back to OSC as to how this might be implemented ahead of the new municipal year in 2021/22.</i>
	The Council has previously considered the suggestion of setting up a Contracts and Procurement Sub-Committee. Given the other processes in place to scrutinise and review procurement activity, the earlier conclusion reached was that a new committee was not needed. Therefore, Officers recommend that this recommendation is not agreed – but we will keep this under constant review.

7. Contribution to strategic outcomes

The delivery of major works at Noel Park will contribute to achieving the priorities of the Borough Plan, in particular Priority 1 (Housing).

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

8.1 Finance

8.1.1 Finance has been consulted in the drafting of the responses to the Scrutiny review recommendations. The contents of the report, on its own, appears not to have additional financial implication. However, any accepted, will be assessed prior to implementation to ascertain if there is an additional financial implication and to what extent.

8.2 Procurement

8.2.1 The Head of Strategic Procurement has been consulted in respect of this report and notes the officer responses to each of the questions raised by OSC.

8.2.2 Strategic Procurement can confirm given the passage of time and the reasons stated in officer responses, costs would have been significantly impacted, resulting in a substantial increase since 2012.

8.2.3 Strategic Procurement can further confirm, the Council has recently considered establishing a Procurement Sub-Committee, which has since been rejected.

8.3 Legal

8.3.1 The Head of Legal and Governance (interim) has been consulted in the preparation of this report, and makes the following comments.

8.3.2 Confirmation is given of the Constitutional power referred to at paragraph 4 of the report – see Part PART THREE – RESPONSIBILITY FOR FUNCTIONS Section B – Full Council & Non-Executive Bodies.

8.3.3 The relevant section 20 consultation process (set out in schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003) is clearly defined. The Council as landlord is required to (i) describe, in general terms, the works proposed to be carried out, (ii) state its reasons for considering it necessary to carry out the proposed works, (iii) state the total expenditure likely to be incurred on the works and (iv) invite written observations in relation to the proposed works or the proposed expenditure (giving details of by when and to where the observations should be made).

8.3.4 The consultation process is not intended, and does not provide, for extensive enquiries as to the background and detail of the works or the costs.

8.3.4 The draft section 20 notice was reviewed and approved as containing the necessary statutory information before being printed and sent.

8.3.5 Leaseholders are entitled to seek information from the Council, including pursuant to the Freedom of Information Act 2000, albeit subject to the exemptions contained in that Act. One of those exemptions is where the cost of provision of the information exceeds the appropriate limit – which is equivalent to 18 hours of officer time (less, if other expenditure is required). In calculating that cost, officers are entitled to aggregate both multiple related requests by

individual leaseholders, and questionnaires submitted by multiple leaseholders where they appeared to be acting in concert.

- 8.3.6 Officers were entitled to take the view from the similarities between the questionnaires submitted that they were submitted by leaseholders acting in concert; and that the cost of responding to questionnaire, individually and collectively, would exceed 18 hours of officer time.
- 8.3.7 Instead of simply relying upon the section 12 exemption and refusing to provide information requested, officers were entitled to, and did, prepare FAQs fully dealing with the issues raised.
- 8.3.8 Under the terms of the leases upon which the leaseholders hold their homes, the Council is obliged to keep in repair (broadly) the structure and exterior of the building of which they form part. It is however for the Council, having taken account of observations made by the leaseholders, to decide the method and timing of any necessary repair works.
- 8.3.9 The Council has no statutory obligation to provide resale packs where a leaseholder assigns his lease to a third party purchaser. In providing information in resale packs the Council should take reasonable care not to misrepresent the known position. However, the Council does make clear that capital programmes may alter; and in any event ultimately the purchaser must rely on their own investigations, including in particular their survey, to identify any repair work needed and its likely cost.

8.4 Equality

- 8.4.1 The following equality implications are noted.
- 8.4.2 Under recommendations 2 and 4, the proposed review of resident consultation and engagement arrangements offers an opportunity to achieve positive equality impacts by ensuring these functions are more effectively targeted, accessible and inclusive for groups with protected characteristics.
- 8.4.3 Under recommendation 11, the reporting of consultation on the proposed payment arrangements (including addressing potential hardship) will need to include consideration of possible equalities impacts of this policy decision.

9. Use of Appendices

Appendix 1: HRSP report to OSC on 15 March 2021

10. Local Government (Access to Information) Act 1985

Noel Park major works programme information is on the HfH website:

<https://www.homesforharingey.org/your-home/noel-park-pods>