

## **Report for Cabinet Member Signing scheduled 5<sup>th</sup> March to 31<sup>st</sup> March 2024.**

**Item number:** TBC

**Title:** Bruce Grove Public Convenience Refurbishment and Extension Works – Variation of Construction Works Contract Award

**Version:** 3.3

**Report authorised by:** David Joyce, Director of Placemaking & Housing

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**Ward(s) affected:** Bruce Castle

**Report for Key/  
Non-Key Decision:** Key Decision

### **1. Describe the issue under consideration.**

- 1.1. To vary an existing award of contract to Lilstone Limited to complete the refurbishment works at the Bruce Grove Public Convenience (BGPC), pursuant to Contract Standing Order (CSO) 3.01(d) and CSO 10.02.1(b) & 16.02.
- 1.2. To approve an increase to the total project budget.

### **2. Cabinet Member Introduction**

- 1.3. As this report is being presented to Cabinet Member for Council House building, Placemaking, and Local Economy for a decision, Cabinet Member introduction is not required.

### **3. Recommendations**

- 3.1. For Cabinet Member for Council House building, Placemaking, and Local Economy pursuant to Contract Standing Order (CSO) 16.02 to:
- 3.2. Approve a variation of construction works contract (No. 3) to Lilstone Limited (The Contractor) pursuant to Contract Standing Order (CSO) 3.01(d) and CSO 10.02.1(b), as detailed in Part B section 3.
- 3.3. Approve a client contingency which will be strictly managed under change control governance arrangements. Refer to Part B section 3 for the contingency value and total award value.
- 3.4. Approve an increase in total project budget of £0.493m.

3.5. To vire £0.493m from the Tottenham High Road Strategy budget to the Tottenham Heritage Action Zone budget where this scheme sits.

#### **4. Reasons for decision**

4.1. The council is currently in contract with Lilstone Limited. There is a requirement under the terms of the contract to pay the contractor for delays to the general progress of work caused by events beyond their control. Additionally, as noted in section 6 of this report unforeseen works below ground and additional works required to meet Network Rail technical approvals have contributed to the required variation set out in Part B section 3 of this report.

4.2. This variation comes at an extremely late stage in the construction programme and the project is expected to complete in March 2024. Non completion of the project could lead to the risk of funding being withdrawn from the Greater London Authority (GLA) & Historic England who have partly funded the refurbishment works at BGPC. The council has grant agreements in place with both funders which cover this scheme.

#### **5. Alternative options considered.**

##### **5.1 Do nothing**

5.1.1 Contractual Liability as detailed in 4.1 of this report.

5.1.2 This will lead to further project delays and risk of withdrawal of funding by the GLA and Historic England who have partially funded the scheme.

5.1.3 This would provide the Council with a partially complete building which would be deemed unsafe, unrentable/unusable space in its current state. Works commenced on site in January 2022 and are projected to complete by 21<sup>st</sup> March 2024. It is acknowledged that the contract duration has 4 weeks remaining before achieving practical completion.

5.1.4 This could further expose the council to a loss of profit claim and or payment of goods which have been procured but perhaps not yet installed.

##### **5.2 In-house Delivery**

5.2.1 There is currently no resource within the council that has the capacity, specialist expertise or qualifications to deliver this service and Lilstone Limited are the incumbent contractor delivering this scheme.

5.2.2 The remaining works could be procured via an alternative contractor, but this would delay completion and impact on grant funding required to be committed by the end of March 2024. Therefore, based on time and cost of re-procurement it is not considered this would represent value for money for the council.

##### **5.3 Alternative Procurement Route**

- 5.3.1 The remaining works could be procured via an alternative contractor. This would delay completion and impact on grant funding required which is to be spent by the end of March 2024. Entitlement to inflation, L&E and loss of profit would remain. Incomplete testing and commissioning of systems installed, time and cost of re-procurement this option is not considered to represent best value for the council.
- 5.3.2 Moving remaining works to the incoming tenant - consideration needs to give to the contractual obligations noted in section 4 of this report. Additionally incomplete testing and commissioning of systems installed. Whilst considering these risks, the Council could explore the possibility of letting the facility on the basis of including within the agreement completion of all remaining construction works. Aside from the building potentially being in an unsafe state at the point of suspending the current contract, entitlement to inflation, L&E and loss of profit as noted would remain and this basis is not recommended for consideration.

## **6. Background information**

- 6.1 In April 2021, following a competitive procurement process via the Dynamic Purchasing System (DPS), Cabinet approved an award of construction works contract to Lilstone Limited for the refurbishment of the Grade II listed Bruce Grove Public Convenience's (BGPC) in the sum of £898,892.64, with planned commencement of the works in July 2021.
- 6.2 A boundary discrepancy highlighted during easement negotiations with Network Rail (NR) in July 2021. This led to a redesign of the new rear extension forming part of the refurbishment and a further planning application being submitted. This led to the contractor revisiting and adjusting their tender price due of cost increases since the time of the original tender submission in February 2021.
- 6.3 The impact of the issues highlighted in 6.2 resulted in a Contract Variation Report (No. 1) being presented to Cabinet in January 2022 asking for the contract awarded to Lilstone Limited to be increased from £898,892.64 to £1,027,414.08 and a revised completion date of 24<sup>th</sup> October 2022.
- 6.4 In September 2022, further delays were reported to the Project Sponsor due to obtaining required Network Rail (NR) technical approvals, and Listed Building consents for unforeseen heritage repairs.
- 6.5 The impact of the issues highlighted in 6.4 resulted in the works being temporarily suspended until January 2023, and a Contract Variation Report (No. 2) being presented to Cabinet in January 2023. This asked for the contract award to Lilstone to be increased from £1,027,414.08 to £1,501,357.00, and to revise the contract completion from 24<sup>th</sup> October 2022 to 22<sup>nd</sup> September 2023.
- 6.6 Since restarting the works in January 2023, the project has suffered further issues with unforeseen works below ground and additional works required to meet Network Rail technical approvals. Permits for works have also been revoked by Transport for London at short notice resulting in delays with new utility main

connections, and meter installations. The project delays since January 2023 are summarised in the table below:

| <u>Cause of Delay</u>  | <u>Time Awarded</u> | <u>Revised Completion Date</u> |
|--|---------------------|--------------------------------|
| <b>Groundwork</b> – unforeseen delays due to clashes with the neighbour’s foundations. On commencement of the excavation works the neighbour’s foundations were wider than expected. This led to a redesign of the new foundations.  | 2 weeks             | 28/09/23                       |
| <b>Delays with delivery of the Cross Laminate Timber (CLT) Frame</b> - This was due to clashes with mosaic works outside the site being completed as part of the South Tottenham regeneration works over Easter 2023 which the BGPC project team were unaware of. The mosaic works delayed installation and prevented the CLT frame from being delivered and lifted into place due to suspension of the footpath, traffic management & parking suspensions by TfL. | 2 weeks             | 20/10/23                       |
| <b>Temporary supporting props in the basement</b> - The contractor was required to provide temporary horizontal props as part of Network Rail technical approvals to replace corroded structural steelwork. This prevented access and impacted on progress with the basement remedial works. This was further compounded with water ingress through the walls once non heritage wall tiles were removed and increased levels of tanking required.                  | 3 weeks             | 10/11/23                       |
| <b>Thames Water mains installation delays</b> - Work permits for the planned installation on 16/09/23 were cancelled by TfL at short notice due to clashes with Tottenham FC playing at home. Thames water confirmed a revised installation date of 02/12/23, but work permits for this date were also cancelled by TfL due to an IT system error meaning a clash with other Thames Water and TfL works in the area.   | 9 weeks             | 16/01/23                       |

|   |   |                                  |
|---|---|----------------------------------|
| <p>This impacted the project's critical path preventing installation of the lift car and shaft (due to the location of the exiting water main behind the proposed location of the lift), completion of the flooring works, and kitchen installation.</p>  |   |                                  |
| <p><b>Thames water delays</b> have further compounded completion of the works and impacted on the installation of the lift (critical path item) which could not be completed to meet the contractor's programme. The contractor submitted V5.3 of their construction programme. This confirmed a revised completion date of 8<sup>th</sup> March 2024. This represents a 7.5-week delay on completion of the works.</p>   | 7.5 weeks   | 08/03/23                         |
| <p><b>Delays with Npower electrical meter installation.</b> The meter installation has been coordinated with the Council's energy team and was programmed for installation on 21/12/23. The utility company did not attend as planned. This impacted on mechanical and electrical installations being commissioned. The Contractor's extension of time claim No8 is to be submitted and reviewed by the Contract Administrator (CA). Contractors V5.4 construction programme issued with revised completion date of 21/03/24 confirmed.</p> | 2 weeks (Formal extension of time to be submitted and to be valued by CA) | Revised completion date 21/03/24 |

6.1. The delays and unforeseen works detailed above have resulted in the risk of the projected construction costs increasing substantially, and this contract award variation No.3 being requested.

6.2. The cost consultant has reviewed the contractor's initial notice for a loss and expense claim, and their initial assessment of the costs due are included in Part B of this report.

### 6.11 Potential Further Risks

6.11.1 The contractor has confirmed a planned project completion date of 21st March 2024 and are working to meet this. However, risks to the project remain and these are summarised with mitigation measures below:

6.11.1.1 Network Rail Wayleave Agreement and Boundary Fence Installation - Agreement needed to provide access onto Network Rail land to enable the boundary fence to be completed and allow maintenance of the building post

completion of the works. Major Projects are engaging with Network Rail Legal team & the Councils Strategic Property team to secure the agreement by 21/03/24. The contractor has confirmed these works can be completed in isolation if needed.

6.11.1.2 We are in the final stages of the refurbishment works and do not anticipate further risks which would prevent completion of the works as planned by the 21<sup>st</sup> of March 2024. However, if the unlikely event that any unforeseen risks do materialise, it is believed these can be accommodated within the remaining balance of the project contingency.

6.11.1.3 There is an urgent need for the contract award variation and budget increase request to be approved by the end of March 2024 to enable timely payments due to the contractor under the contract to be made. The risk of not proceeding with a member signing by this date are detailed below:

- The contractor could stop construction activities on site. This would stop final testing and commissioning from being completed and prevent practical completion of the works.
- Additional construction costs would apply as the contractor's prelims for compound, security and other overheads would apply for prolongation.
- The contractor could seek to recover payments which are due. This would be at additional costs to the council due to legal fees and interest on monies which are due.
- Securing the Network Rail wayleave agreement would have to be put on hold.
- The commercial letting of BGPC would be put on hold as the building would not be completed and handed over to the council.

## **6.12 Client Comment - Impact of this Variation**

6.12.1 There was no warning around this further extension which is beyond the current control measures of the project and its contingency budget.

6.12.2 This extension is funded from the Tottenham High Road Capital budget with significant impact. It reduces the programme's outputs and ability to deliver more shopfronts and public realm improvements in Bruce Grove thereby reducing value for money.

6.12.3 Due to this unexpected variation so close to the works completion, the council is holding a further contingency budget to cover any potential further risks, thereby reducing value for money overall if any further risks are not contained.

6.12.4 To mitigate this impact on the programme outputs, the Placemaking Team is actively engaging with funders to try to secure additional external grant.

## **6.13 Title Matters**

- 6.13.1 As detailed in 6.4, then project has extended the premises to the boundary line. To maintain the building going forward there is a requirement to secure a permanent right of access across Network Rail land. The property team are in discussion with Network Rail in how these rights can be secured for LBH and their future occupiers.
- 6.13.2 The current title has a restriction that ensure that the premises are used for a "...public convenience for men and women and for no other purpose whatsoever...". Given that the premises have already been converted to a commercial entity the Property team are seeking legal advice on how we best protect LBH from legal challenge, via an insurance indemnity. Until this title issue is resolved LBH will not be able to enter a lease with the future tenant. To try and protect LBH, we will seek to secure the provision of public conveniences in the new lease.

## **6.14 Letting of the Premises**

- 6.14.1 Further to planning permission granted in early 2021 to enable the building extension and use as a commercial asset, the building is currently being advertised .
- 6.14.2 It is unlikely that a tenant will be in place by the time works complete in March 2024. This is being managed by the Property team and will seek to ensure that the new lease provides appropriate commercial terms – which will include the need to fulfil the title obligation for provision of public conveniences.
- 6.14.3 As a separate revenue budget of £50,000 has been identified by the Placemaking Team to support post construction costs associated with void period and letting for a period of 6 months. This will include security costs such as hoardings, guarding, and insurance for the building.

## **6.15 Lessons Learned**

- 6.15.1 Given the number of extensions and delays on the scheme, there is an opportunity for the council to undertake a Lessons Learned Review to understand the delivery challenges better and embed these into future schemes to reduce the risk of the same or similar occurrences at increased costs to the council and its partners.

## **7 Contribution to the Corporate Delivery Plan 2022-2024 High level Strategic outcomes'**

- 7.1 The Bruce Grove Public Conveniences project supports the Council in responding to the following themes in the Council's Corporate Delivery Plan (CDP).

### **7.2 Theme 1: Resident experience, participation, and collaboration**

7.2.1 The project responds to High-Level Outcome 2 of Theme 1 of the CDP by facilitating resident participation in the development of the project and giving them a meaningful opportunity to directly influence how specific funding is spent: this project came about through a campaign by the Last Elm residents group, who were also engaged throughout the design development process. The outcome of the project will be the appointment of a community-focused operator, offering valued services to residents.

### **7.3 Theme 2: Responding to the climate emergency**

7.3.1 The project responds to Outcome 3 of Theme 2 of the CDP by contributing towards implementation of a Corporate Property Model through activation of a disused Council building for community use. It responds to Outcome 4 by encouraging sustainable construction and achieving a high standard of energy efficiency on completion, thus ensuring Haringey is a borough where the built environment supports carbon reduction and climate adaptation.

### **7.4 Theme 3: Children and young people**

7.4.1 The project responds to Outcome 3 of Theme 3 of the CDP by creating employment opportunities for young people, including those with SEND and NEETS, under the terms of the Council's Social Value Agreement with the café's operator, thus ensuring more young people can access high-quality information, advice and guidance relating to employment.

### **7.5 Theme 4: Adults, health, and welfare**

7.5.1 The project responds to Outcome 1 of Theme 4 of the CDP by providing a new café use that will serve as a meeting place for local residents, enabling them to feel more connected to their neighbours and feel they live in an area where people help each other. It responds to Outcome 2 by working to address food poverty by offering an affordable local food option.

### **7.6 Theme 6: Safer borough**

7.6.1 The project responds to Theme 6 of the CDP by offering a new development that will encourage increased community connections, and positive social interactions, and improved street lighting.

### **7.7 Theme 7: Culturally Rich Borough**

7.7.1 By conserving a Grade II listed building on Historic England's Heritage at Risk register, the project responds to Theme 7 of the CDP, demonstrating that Haringey is a place where arts, culture and heritage are fostered, celebrated, and valued, which will enhance Haringey's cultural reputation and profile in London and beyond. It further responds to Theme 7 by increasing resident and community collaboration and participation in arts and culture.

### **7.8 Theme 8: Placemaking and economy**



- 7.8.1 The project responds to Outcome 1 of Theme 8 of the CDP by improving the accessibility of high streets and town centres through provision of a fully accessible facility with public access to a disabled toilet; supporting the high street in Tottenham to continue to adapt to the post-Covid landscape, including changed consumer and visitor behaviour, through bringing a disused heritage asset back into use as a multipurpose facility, and future-proofing it through the incorporation of disabled access and measures to sustain a high level of energy efficiency; and the introduction of a new business into a disused building.
- 7.8.2 It responds to Outcome 2 by supporting the creation of new business activity and growth; and creating more employment space, jobs, and apprenticeships locally in the supply chain.
- 7.8.3 It responds to Outcome 3 by supporting Haringey residents to develop new learning and skills and assisting those furthest from the labour market – long-term unemployed and those people who are economically inactive – to access Good Work through linking to training and job opportunities, and maximising opportunities for Good Works in the Borough, as part of appointment of a socially minded café operator and piloting of a Social Value Agreement model.
- 7.8.4 It responds to Outcome 4 by extracting maximum social value from Council procurement activity and using the Council's property portfolio to generate maximum social value for communities by piloting a new Social Value Agreement model.
- 7.8.5 It responds to Outcome 5 by spearheading the renewal of Bruce Grove Town Centre, where the growing number of local small and independent businesses have spaces to flourish, and the diverse local community feel comfortable to shop, proud to work, keen to socialise, and take pride in welcoming visitors; and serving as an example of public involvement in planning, design and management of their local spaces/places across South Tottenham and creating that promotes increased social value from investment in Bruce Grove.

## **8 Carbon and Climate Change**

- 8.1 This project will support the Borough's carbon reduction and climate change ambition by delivering approx. 20.99 tCO<sub>2</sub>pa carbon reduction through the installation of energy efficient measures such as double glazing and green roof. This work also benefits the Council in reducing the reactive maintenance requirements at the facility in future by economically fixing the root cause of the condition issues within a single project whilst avoiding additional temporary repairs costs.

## **9 Statutory Officers comments (Director of Finance, Procurement, Head of Legal and Governance, Equalities)**

### **9.1 Finance Comments:**

- 9.1.1 This report seeks approval for to increase the project budget by circa £493k from £1.948m to £2.441m. The increase in the budget will be funded by viring budget from the Tottenham High Road Strategy budget which will reduce the funding for the strategy and therefore a loss of outputs as described in the report.
- 9.1.2 The estimated outturn cost for the project is £2.441m, which is £1.166m (91.45%) over the original budget for the project (as detailed below).

| Item  | Original Budget | Revised Budget Jan-22 | Revised Budget Nov-22 | Revised Budget Mar-24 | Var   | Var   |
|-------|-----------------|-----------------------|-----------------------|-----------------------|-------|-------|
|       | £m              | £m                    | £m                    | £m                    | £m    | %     |
| Total | 1.275           | 1.451                 | 1.948                 | 2.441                 | 1.166 | 0.914 |

- 9.1.3 The current budget of circa £1.948m is being funded within –the Tottenham Heritage Action Zone (HAZ) capital scheme and the additional cost of £0.493m as detailed in section 9.1.1 will be funded by reallocating funding from the Tottenham High Road Strategy ( Scheme 474).

## 9.2 Legal Comments

- 9.2.1 The Assistant Director of Legal and Governance (Monitoring Officer) has been consulted in the preparation of this report.
- 9.2.2 As the cumulative value of variations under this contract exceed £500,000, the variation is treated as a Key Decision, Cabinet is required to approve the variations (CSO 3.01 d).
- 9.2.3 Subject to the above, Cabinet has power to approve the decision under CSO 10.02.1 b) or the Leader may allocate to the Cabinet Member with the relevant portfolio (under CSO 16.02).
- 9.2.4 The Assistant Director of Legal and Governance (Monitoring Officer) confirms that there are no legal reasons preventing the Cabinet Member for Council House Building, Placemaking and Local Economy from approving the recommendations in this report.

## 9.3 Procurement Comments (Copied from January 2024 Exception Report issued. Officers still to confirm acceptance of comments)

- 9.3.1 Strategic Procurement (SP) note that this report relates to an approval request to uplift the project budget and to approve a revised projected completion date of constructions works due to ongoing delays.

- 9.3.2 SP note that the project budget was revised in 2021 and 2022.
- 9.3.3 The cumulative value for the budget uplift including this variation exceeds £500,000 and as such must be treated as a “key Decision”.
- 9.3.4 The request for the approval of this variation is in accordance with Contract Standing Order (CSO) 3.01(d), 10.02.1(b) & 16.02.

## **9.4 Equalities**

- 9.4.1 The Council has a Public Sector Equality Duty (PSED) under the Equalities Act (2010) to have due regard to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
  - Advance equality of opportunity between people who share those protected characteristics and people who do not;
  - Foster good relations between people who share those characteristics and people who do not.
- 9.4.2 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. Marriage and civil partnership status applies to the first part of the duty.
- 9.4.3 Although it is not enforced in legislation as a protected characteristic, Haringey Council treats socioeconomic status as a local protected characteristic.
- 9.4.4 The proposed decision is to request approval of a contract award variation to Lilstone Limited up to the value stated in Part B of this report. This will allow the Council to deliver the refurbishment of the Grade II listed landmark as part of the Tottenham Heritage Action Zone initiative to make the area a more engaging and vibrant place for people to live and work.
- 9.4.5 No negative consequences are identified for those who share a protected characteristic, and it is concluded that the works will have a wholly positive impact by improving the street scape and repurposing dilapidated and disused council asset and inviting people to spend more time in the area.
- 9.4.6 The following measures have ensured that the works comply with the Council's equalities duties:
- A key objective of the proposed works is to improve the accessibility and amenity of the existing site, including those from the protected characteristic groups. The Council has gone through a traditional design process and has therefore maintained control over the design of the works to ensure that they meet our high

accessibility requirements, including DDA compliance under part M of building regulations;

- No reduction in service provision, either during the works or once they are completed;
- Services will be improved through better buildings and IT, making services more accessible and effective;
- Improved access arrangements – with level thresholds, accessible doors, and platform lift are to be provided to give better access to the ground floor and basement in line with current DDA requirements;
- New heating will also be installed, making the environment more comfortable for all;
- Additional security will be of benefit to all creating a safer environment.

9.4.7 As an organisation carrying out a public function on behalf of a public body Lilstone Limited will be obliged to have due regard for the need to achieve the three aims of the Public Sector Equality Duty as stated above. Appropriate contract management arrangements will be established to ensure that the delivery of the major works does not result in any preventable or disproportionate inequality.

## **10 Use of Appendices**

10.1 Appendix A – Part B

## **11 Background papers**

11.1 This report contains exempt and non-exempt information. Exempt information is under the following categories (identified in amended Schedule 12A of the Local Government Act 1972): Information relating to financial or business affairs of any particular person (including the statutory holding that information).