

Report for Cabinet Member for Council House building, Placemaking, and Local Economy (Cabinet Member Signing – 22 May 2024)

Item number: N/A

Title: Approval to vary the contract with Pinsent Masons to provide Legal Advisor services for the High Road West Regeneration Programme

Report authorised by: David Joyce, Director of Placemaking and Housing

Lead Officer: Sarah Lovell, Head of Area Regeneration – North Tottenham

Ward(s) affected: Bruce Castle

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

1. Describe the issue under consideration

- 1.1 In September 2017, Cabinet gave approval to enter into a Development Agreement (“DA”) with Lendlease, the preferred bidder for the High Road West Scheme (“the Scheme”). The DA and Compulsory Purchase Order Indemnity Agreement (CPOIA) were entered into with Lendlease in December 2017. In March 2021 the Council’s Cabinet agreed to enter into a funding package with the Greater London Authority (“GLA”) to deliver the initial phases of the Scheme, referred to as “Phase A” and which includes the Love Lane Estate.
- 1.2 In March 2022, following a competitive procurement process, the Council entered into a contract with Pinsent Masons LLP (“Pinsent Masons”) to provide legal advice for the Scheme, including advice related to (a) the DA, CPOIA and funding agreements with the GLA; (b) advice related to land assembly and a compulsory purchase order (CPO) and (c) ad hoc legal advice.
- 1.3 This report seeks approval by the Cabinet Member for Council Housebuilding, Placemaking, and the Local Economy for a contract variation under Contract Standing Order (CSO) 10.02.1 (B), to increase the contract value. CSO 10.02.1 (B) states that subject to provisions of CSO 3.01 and the Regulation 72 of Public Contracts, compliance with Financial Regulations and subject to satisfactory outcomes of contract monitoring, Cabinet may authorise a variation to a contract.
- 1.4 The Council initially pays for the costs of legal advice through the capital budget for the Scheme, with the majority of the costs later reimbursed by Lendlease through the provisions of the CPOIA. The portion of the contract which is reimbursable is specifically those costs relating to land assembly and CPO. **[See exempt report for figures]** It is anticipated that the majority of spend under the increased contract value will relate to land assembly advice and as such will be reimbursable under the same legal provisions.

2. Recommendations

- 2.1 The Cabinet Member for Council Housebuilding, Placemaking, and the Local Economy is recommended to approve the variation of the contract with Pinsent Masons LLP, to increase the value of the contract by the amount set out in the exempt report, pursuant to CSO 10.02.1 (B), for the reasons set out in the body of this report.

3. Reasons for decision

- 3.1 The Council requires the support of a strong and highly regarded legal practice for the Scheme, to provide legal advice and support across a range of legal issues, including land assembly, CPO and management of funding agreements and the DA in place between the Council and Lendlease.
- 3.2 In March 2022, following a competitive procurement exercise, the Council awarded a contract to Pinsent Masons as the Most Economically Advantageous Tender for the legal advisor contract to support the Scheme and was appointed on a four-year contract. Since being appointed, Pinsent Masons has provided valuable support to the Council in key workstreams across the range of legal issues mentioned above and delivered on their brief to a high standard.
- 3.3 Although there are two years remaining on the contract, the contract spend is projected to reach the current limit within the next six months. This is a result of the Council requiring a significantly greater level of legal service provision over the course of the contract to date, particularly in relation to the land assembly and CPO workstreams. In this period, the Council has made a CPO to enable delivery of Phase A, which was confirmed on behalf of the Secretary of State for Levelling Up, Housing and Communities in February 2024. In addition, the Council and Lendlease have been working towards satisfying the phase conditions within the DA for the first sub-phase, Phase 1A.
- 3.4 It is therefore recommended that the current contract be varied to accommodate further expenditure on legal services. This will include ongoing advice related to land assembly and the DA, to prepare for the delivery of the next sub-phases of the Scheme following Phase 1A. There is clear justification for continuing the service provision by Pinsent Masons, based on their performance under the contract to date and strong knowledge of the Scheme, and given that there are two years remaining on the contract.
- 3.5 It is anticipated that this increase in the contract value would allow for approximately twelve months of additional work beyond the current allowance. This would provide the Council with consistency of service up to this date, and additional time to reprocur a new service provider on a longer-term contract.
- 3.6 A significant majority of the costs of the legal contract, specifically all the costs relating to land assembly and CPO, will be reimbursable by Lendlease on a phased basis over the duration of the Scheme through the provisions within the CPOIA. The Council will grant leases to Lendlease for individual phases once conditions within the DA are met, and the costs that the Council has incurred in assembling the land interests for each phase, including the costs of legal advice, will be reimbursed to the Council.

3.7 While a small portion of the costs of the legal contract will not be reimbursable, that being costs for advice on the DA, CPOIA and GLA funding agreements, it is important that the Council has access to the appropriate expert legal advice for these matters, to ensure that it delivers on its legal obligations and that it maintains a robust position in any discussions related to these agreements.

4. Alternative options considered

4.1 To carry out the work in house

As spend on this contract reaches capacity, the Council may consider reverting to these services to an inhouse resource. Currently, however there is insufficient capacity to carry out the scope of this legal advisor function in house. This variation allows the Council to benefit from Pinsent Masons skills, knowledge and resources, as well strong previous track record on the Scheme that will support the Council progressing into the next stage of the programme.

4.2 Not to vary this contract and procure a new provider

Not to vary this contract would result in the loss of technical expertise to support the Scheme for a period of time until the new legal advisor services were procured and onboarded. This would represent a substantial risk to the delivery of the scheme, including financial, legal and programme risks. By varying the value of this contract, the Council will benefit from consistent service delivery for a further period of around twelve months and provide additional time to reprocur a new service provider on a longer-term contract when the spend limit is reached.

5. Background information

DA and CPOIA

5.1 As noted, in 2017 the Council entered into a DA and CPOIA with Lendlease to deliver the Scheme. The DA sets out the agreed commitment to deliver the regeneration of the Love Lane Estate and surrounding land to deliver the following:

- Over 2,600 high-quality, sustainable homes, including at least 546 council owned social rent homes.
- Over 130,000sqft of commercial, retail and leisure space throughout the Scheme
- Funding for social and economic support for businesses and residents
- A new Library and Learning Centre and a refurbished Grange Community Hub
- Public Realm investment including a civic square, c.143,000sqft of green space, a large new community park with an outdoor gym, children's play area and new gardens.

5.2 The CPOIA sets out both the Council and Lendlease's obligations to acquire and secure vacant possession of the land within the Scheme, including considering the use of CPO powers.

Procurement of Pinsent Masons

- 5.3 To support the delivery of the Scheme, external legal advice has been required to provide expert advice and support regarding areas of work such as, but not limited to the DA, CPO(s) and GLA Funding Agreements.
- 5.4 The existing contract was awarded to Pinsent Masons in March 2022. This followed a mini competition between firms in Lot One (Regeneration related Legal Services) and Lot Two (Full Range of Legal Services) of the London Boroughs Legal Alliance (LBLA) Framework.
- 5.5 The initial profile of spend at the time of procurement anticipated that the contract value would be sufficient to support up to four years of legal costs **[see exempt report for figures]**.
- 5.6 Following the positive resident ballot on the Love Lane Estate in September 2021, the planning application for the Scheme was submitted, with permission granted in August 2022. This milestone unlocked and accelerated other programme workstreams, including CPO and land assembly, start on site and the Council's drawdown of Affordable Housing Grant funding. All of which required support from the project's legal advisors.
- 5.7 The core part of the legal advisor brief was the delivery of the CPO for Phase A of the Scheme. This work was delivered in a concentrated period of time from November 2022, when Cabinet agreed for the Council to use its CPO powers to deliver Phase A, up to February 2024, when confirmation of the CPO was issued on behalf of the Secretary of State. Pinsent Masons advised on all the stages of the CPO including in relation to the land referencing exercises, preparation of the Council's Statement of Reasons and Statement of Case, and preparation of evidence for the public inquiry which took place in November 2023.
- 5.8 The costs of this service required high levels of expenditure in the short period of the CPO, and the costs for the CPO workstream were higher than the original estimate. This was mainly due to the extended length of the public inquiry, the number of witnesses and the breadth and depth of the objector's evidence, which were in excess of what had been expected and all required legal advice resource and advice. In addition, the judicial review of the Scheme's planning permission by Tottenham Hotspur Limited, which took place at the same time as the CPO process and was dismissed by the High Court on 18 October 2023, also presented further complexities and legal resource due to its interactions with the CPO process and the Council's evidence.
- 5.9 Legal advice on the CPO was supported by King's Counsel, and a portion of these fees were paid as a disbursement through the same contract **[see exempt report for figures]**. These fees would normally be paid separately, and as such this led to some additional pressures on the contract budget.
- 5.10 The total spend on the CPO **[see exempt report for figures]** reflects the complexity of the legal requirements of the Council in progressing the CPO, which

has now exhausted the available budget, even with the ad hoc sum provided as part of the contract taken into account.

- 5.11 In February 2024, the Director of Placemaking and Housing agreed to vary the contract with Pinsent Masons LLP, to increase the value of the contract [**see exempt report for figures**] pursuant to CSO 10.02.1 (A). This was in light of the above spending pressures, and the need to continue to have legal advice in place for the short-term while several major milestones for the Scheme were imminent. This includes advising on next steps following the CPO inquiry outcome and progressing the Scheme to the stage of meeting the remaining DA conditions for Phase 1A.
- 5.12 This report proposes a second variation of the contract, pursuant to CSO 10.02.1 (B), to further increase the contract value [**see exempt report for figures**], for the reasons set out in section four. The total increase in price does not exceed 50% of the value of the original contract, in line with Reg 72 1 (c) (iii) of the Public Contracts Regulations 2015 (the Regulations).
- 5.13 The proposal to vary the contract is in accordance with the LBLA Framework, which states the following at paragraph 6.5:

“If at any stage during the provision of Services the Law Firm believes that:

- i) the scope of the work instructed has been altered by the Contracting Authority or OCB such that it justifies a change to the previously agreed fixed or capped fee; or*
- ii) **any estimated fee may be exceeded;***

the Law Firm shall as soon as reasonably practicable inform the Instructing Officer (it being acknowledged by the Parties that all fixed, capped and estimated fees are based on a description of the scope of work and certain pre-agreed and documented assumptions as set out in the Call-Off Contract Order Form). The Contracting Authority or OCB shall work in such circumstances with the Law Firm to agree a revised fixed or capped fee or estimate and to minimise the extent of any increase.”

- 5.14 Officers will be undertaking a competitive procurement exercise for a new long-term legal advisor contract for the Scheme later in the year. This will ensure that the succession of services is in place with minimal disruption to the Scheme.

6. Contribution to strategic outcomes

- 6.1. Approval of the recommendation in this report supports the delivery of the High Road West Scheme through ensuring the financial arrangements are in place in accordance with the Development Agreement and GLA Grant Agreements. The Corporate Delivery Plan (CDP) specifically refers to High Road West as a priority, noting that it includes 2,600 new homes; 500 council homes; a new library and Learning Centre; refurbished Grange, a new 3,500sqm civic square; commercial space; a new 5,600 sqm public park; a new local centre, £10m socio-economic programme. Specifically, the scheme contributes:

- **Homes for the future:** the Council wants all its residents to have a safe, sustainable, stable and affordable home and as such is committed to delivering new Council homes, bringing up the standard of private rented housing, and preventing homelessness. The HRW development will deliver at least 500 new, sustainable, Council homes to support this objective alongside public realm and social infrastructures as part of a healthy and sustainable neighbourhood that includes the services, facilities and spaces that will support the wellbeing of our residents.

7. Statutory Officers comments

Finance

This information is contained in the exempt report.

Assistant Director Legal & Governance (Monitoring Officer)

- 8.2. The Assistant Director Legal & Governance (Monitoring Officer) has been consulted in the preparation of this report.
- 8.3. The services are above the threshold where the modification rules set out in the Public Contracts Regulations 2015 (the Regulations) apply.
- 8.4. Under Reg 72 1 (c) a contract may be extended where all of the following conditions are met:
- (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
 - (ii) the modification does not alter the overall nature of the contract;
 - (iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.
- 8.5. Under Reg 72 (3) the Council is required to publish a notice providing details of the modification.
- 8.6. CSO 10.02.1 (b) allows the Cabinet to approve variations or extensions of contracts where the value is £500,000 or more.
- 8.7. CSO 16.02 states that decisions reserved to Members under CSO's will ordinarily be taken at a Cabinet meeting. Notwithstanding this, the Leader may take any such decision between meetings of the Cabinet, including decisions that have become urgent, and the Leader may also allocate any such decision whether urgent or not to the Cabinet Member having the relevant portfolio responsibilities.
- 8.8. 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.

Strategic Procurement

- 8.9. Strategic Procurement were consulted on the preparation of this report. CSO 10.02.1 b) permits the Cabinet to vary a contract where the value is £500,000 or more and is compliant with Reg.72(1)(c) of Public Contract Regulations. Strategic Procurement support the recommendations in section 2 of this report as it provides the best value for money.

8. Local Government (Access to Information) Act 1985

High Road West Cabinet and Full Council Papers:

- 8th November 2022 Cabinet Report – High Road West Scheme Phase A Compulsory Purchase Order ([link](#))
- 19th July 2022 Cabinet Report – High Road West – Appropriation of Land in Plot A and Consultation on the Use of Ground 10a of the Housing Act 1985 ([link](#))
- 13th July 2021 Cabinet Report – High Road West - Approval of Resident Offers, Landlord Offer and Resident Ballot ([link](#))
- 16th March 2021 Cabinet Report – High Road West – Conditional Approval of Funding and Next Steps ([link](#))
- 10th March 2020 Cabinet Report - High Road West – Next Steps for Consultation on Resident Offers ([link](#))
- 8th March 2018 Cabinet Report- High Road West Regeneration Scheme – approval of the next steps for the Love Lane Leaseholder Offer and for delegated authority to agree all valuation and compensation packages for the land interests due to be acquired ([link](#))
- December 2017 Full Council Report - High Road West Regeneration Scheme – Approval to seek Secretary of State Consent to dispose of housing land ([link](#))
- 12th September 2017 Cabinet Report- High Road West Regeneration Scheme – appointment of a preferred bidder and next steps ([link](#))
- 13th September 2016 Cabinet Report- Tottenham Housing Zone Phase 2- North Tottenham ([link](#))
- 15th December 2015 Cabinet Report- High Road West Regeneration Scheme Update and Next Steps ([link](#))
- 20th January 2015 Cabinet Report - Site Acquisitions Fund – approval for decisions under Delegated Authority ([link](#))
- 16th December 2014 Cabinet Report- High Road West Regeneration Scheme- Masterplan and Next Steps ([link](#))

- 15th July 2014 Cabinet Report- High Road West Regeneration Scheme Consultation. [\(link\)](#)
- 28th November 2013- High Road West Regeneration Project - Master Plan Option Consultation Feedback and Next Steps. [\(link\)](#)