




**Haringey Council**

<b>Report for:</b>	<b>Leader Signing on 30<sup>th</sup> July 2015</b>	<b>Item Number:</b>	
<b>Title:</b>	<b>Hornsey Town Hall: Procurement Procedure</b>		
<b>Report Authorised by:</b>	<b>Lyn Garner, Director Regeneration, Planning &amp; Development</b> 		
<b>Lead Officer:</b>	<b>Jon McGrath, Assistant Director Property &amp; Capital Projects</b>		
<b>Ward(s) affected:</b> <b>Crouch End</b>	<b>Report for Key/Non Key Decisions:</b> <b>Key</b>		

**1. Describe the issue under consideration**

- 1.1 On Tuesday 16th June 2015 Cabinet gave approval for the disposal of the Hornsey Town Hall (HTH) site using a specific procurement procedure. The approval is as follows:

‘Agree that officers can take the HTH site to the open market via an OJEU Competitive Procedure With Negotiation (CPN) (in accordance with Regulation 29 of the Public Contracts Regulations 2015) immediately to secure a Developer for the HTH site and operator for Hornsey Town Hall on the basis that a further report will be brought forward to Cabinet to select a preferred bidder once the procurement exercise has been completed’.

- 1.2 Following a review by external lawyers, a change to the OJEU procurement route has been recommended, switching from the CPN route to a Competitive Dialogue (CD). Given the specificity of the original recommendation, a further decision is now required in order to move forward in a timely fashion.



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## **2. Cabinet Member introduction**

2.1 This report sets out a slight amendment to the procurement procedure approved in the June 2015 Cabinet meeting. This amend will ensure we are able to pursue the most appropriate route to ensure a long term sustainable future for the Hornsey Town Hall site. The council remains committed to securing a solution which allows the community to use the building and very importantly preserves the heritage, and we remain enthusiastic about receiving a range of innovative proposals coming forward through the procurement process.

## **3. Recommendations**

3.1 The Leader is asked to:

3.1.1 Agree that the HTH site (as shown edged in red line plan at Appendix A) be taken to the market via a competitive OJEU procurement exercise and using a CD procedure, on the basis that a further report will be brought forward to Cabinet to select a preferred bidder once the procurement exercise has been completed; and

3.1.2 If the CD procedure proves to be problematic, to delegate variation of the OJEU procurement route to the Director of Regeneration, Planning & Development, following consultation with the Lead Member for Housing and Regeneration and the S151 officer.

## **4. Alternative options considered**

4.1 The alternative options that have been considered for the HTH procurement procedure are as follows

- Do nothing –The Council could pursue the selected CPN route as originally approved, with only a set of objectives and delivery parameters in place. However, there would be a risk of external challenge that the CPN procedure has not been correctly undertaken.
- Use a different OJEU procedure – the other procedures available would not allow sufficient dialogue with bidders during the process..

## **5. Background information**

5.1 Following initial advice from the Councils commercial advisers and internal lawyers, a decision was taken at Cabinet not to pursue a full CD process in the Hornsey Town Hall procurement process. This decision was largely informed by the knowledge that bidders would perceive full CD negatively (a view confirmed through the soft market testing process) and that the new (and



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untested) CPN process was an appropriate route. The advisers did caveat this advice given the newness of the CPN process.

- 5.2 However, a review undertaken by the Council's recently appointed external Legal Adviser has questioned the use of CPN as the preferred procedure and has advised that an OJEU Competitive Dialogue (CD) procedure would be preferable to CPN for the following reasons:

CPN is a new procedure and is virtually untested. CPN and CD are closely related and have a number of similarities. However, there are two key distinguishing features:

1. In the case of CPN, the contracting authority is expected to know what it wants, whereas in CD the authority is expected to know what it needs. In light of the fact that the council can only specify its requirements in quite general terms, it is thus arguable that the council cannot therefore comply with this obligation. It should be stressed that this is the prudent approach to CPN – again, since CPN has not been tested or challenged, it is considered sensible to approach this new procedure with caution. In CD, the authority knows what its needs are but does not have a specific set of requirements (such as final use for the site and building) setting out the means by which those needs could be fulfilled.
  2. In CD, once the dialogue has been concluded, the contracting authority may ask the remaining participants to clarify, specify and optimise their final tenders, however, with CPN, there can be no further discussions with bidders once negotiations have been formally concluded. As a result, under a CPN the council may end up in a position where none of the final bids received are in line with the council's requirements, which could mean no preferred bidder can be selected.
- 5.3 Considering this advice, we believe it would be the best approach to change to a CD procurement approach in this instance, which will require an amendment to the 16 June Cabinet decision.
- 5.4 The broad programme associated with CD is likely to stay the same as CPN, therefore contracts should exchange with the preferred bidder by October 2016 and there are therefore not likely to be any cost implications associated with this change.

## **6. Comments of the Chief Finance Officer and financial implications**

- 6.1 The CFO has been consulted on this report and has no further comments to add.



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**7. Comments of the Assistant Director of Corporate Governance and legal implications**

7.1 The Council must carry out an OJEU process as set out in the Public Contracts Regulations 2015 and comply with the Council's Contract Standing Orders in respect of this procurement. Legal advice must be obtained throughout the process. A further report will have to be presented to Cabinet for approval once a preferred bidder has been identified.

**8. Equalities and Community Cohesion Comments**

9. The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to:

- Tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
- 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.

9.1 Current use of the town hall building is low, there are at present a number of creative groups that operate from the site on an interim basis. These groups do not contract directly with the Council and are aware that their use of the building is on an interim basis. Existing users of the building are being kept informed as part of the consultation process associated with this decision and where possible will be advised of options for alternative future accommodation.

9.2 Securing future community use of the building is a key objective within the tendering process and successful bidders will need to demonstrate how their proposed use of the building will meet this objective. As such the long-term strategy for this site should contribute to improved community cohesion and access for local communities. Information to be made available during the tendering process will include a report from the Hornsey Town Hall Creative Trust reflecting input from the community on what they would like to see as part of the community use of the building. The Trust will also form part of the evaluation panel. The Trust has arranged stakeholder workshops to better understand what communities would want from the community use part of the scheme. To ensure that this process is as representative as possible of local communities, including those with the protected characteristics, the Trust may wish to engage with a range of community groups to promote the workshops.



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## **10. Head of Procurement Comments**

10.1 The Construction Procurement Group have been consulted regarding the procurement process to secure a developer for the Hornsey Town Hall site and operator for Hornsey Town Hall

10.2 Any procurement process should follow EU procurement directives and the Public Contracts Regulations 2015

10.3 Further Procurement comments and advice can be provided as the development of the procurement documents is progressed.

## **11. Policy Implication**

11.1 No policy implications arising from change in procurement procedure.

## **12. Reasons for Decision**

12.1 Cabinet approval obtained on 16<sup>th</sup> June 2015 included approval of the CPN procedure, however external legal advice has recommended the CD procedure.

12.2 The CD route is thought to carry less risk than the new CPN route as it is already well established and therefore precedents have been set for how it can be efficiently run and legal advice deems it to be the most appropriate procurement route for HTH.

12.3 A timely decision on the procurement procedure for HTH is required to avoid a delay in starting the procurement, which will in turn assist in preventing further deterioration to the listed building, maximise the potential of the buoyant market to attract potential developers, remove the ongoing liability of the building to the Council at the earliest opportunity and address the longstanding frustrations of the local community at the timeframe in securing a sustainable future for the Town Hall.

## **13. Use of Appendices**

Appendix A- Site plan

## **14. Local Government (Access to Information) Act 1985**

**N/A**