

Report of Head of Regeneration

Report to Director of City Development

Date: 16th March 2018

Subject: Engine House Procurement

Are specific electoral wards affected? If yes, name(s) of ward(s): City and Hunslet	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: 10.4 (3) Appendix number: 1	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Summary of main issues

1. This report updates the Director of City Development on the procurement exercise to secure a developer partner to restore and refurbishment of the Grade II listed Engine House – an asset which is sited as part of the Tower Works regeneration site.
2. Carillion (Maple Oak) Ltd were selected as preferred developer in 2015. Carillion Maple Oak (Ltd) is a wholly owned subsidiary of Carillion PLC.
3. In January 2018, Carillion PLC entered into liquidation. The Council has sought clarification from Carillion (Maple Oak) Ltd – a company not in liquidation – on a number of areas to seek certainty and clarity that Carillion (Maple Oak) Ltd could meet the Council's requirements.
4. For the reasons set out in exempt appendix 1, this report recommends the abandonment of the procurement exercise without award of a contract. This report details the rationale for the recommendation.

Recommendations

- 5.1 The Director of City Development is asked to
 - i) Note the contents of this report.

- ii) Agree that the procurement exercise (Ref No: DN187182) to secure a developer partner for the restoration of the Engine House be abandoned without an award of contract to the preferred developer (Carillion Maple Oak (Ltd)) for the reasons set out in confidential appendix 1.
- iii) Note that the Principal Regeneration Officer will be responsible for implementing these actions.

1. Purpose of this report

- 1.1 This report makes recommendations on the procurement exercise (Ref: DN187182) to select a developer partner to develop the Engine House.

2. Background information

2.1 In 2013, Leeds City Council acquired, from Homes England (then named Homes and Communities Agency), the Grade II listed Engine House and three listed Italianate Towers. The assets are located within the Tower Works development site in the South Bank regeneration area. The Council acquired the assets for a nominal sum and the HCA made a dowry payment to the Council at the time of transfer– a grant to assist in the refurbishment and maintenance of these assets. Homes England are the ultimate freeholder of the adjoining land to these assets.

2.2 The Engine House has been vacant for some time and requires investment to restore and refurbish it.

2.3 On 25th February 2014, Executive Board considered recommendations with regards to the future redevelopment of the Engine House, and actions to stimulate redevelopment of the wider site. The report summarised how:

- i) Homes England were to progress a dispose of their land at the Tower Works site to a developer, with the developer expected to meet development milestones that results in new development starting on site in the short to medium term.
- ii) Homes England were to progress a disposal through an EU compliant procedure, and in compliance with the Public Contracts Regulations 2006.
- iii) The Council would seek to dispose of the Engine House to secure its redevelopment through the procurement exercise. It was set out how the procurement exercise would package each site as a 'lot' (a lot for the Homes England land, and a lot for the Engine House: each lot having its own evaluation criteria, with the Council having sole control of the lot for the Engine House).

2.4 At this time, Executive Board

- i) *Agreed that the Director of City Development progresses the disposal of the Engine House for the selection of a preferred bidder through a procurement exercise, working in partnership with the Homes and Communities Agency, as per the principles set out in paragraph 3.15 of this report and the indicative timescales outlined in paragraph 3.17.*
- ii) *Noted that the Engine House is held for planning purposes under the Town and Country Planning Act 1990 and the legal implications set out in section 4.5 of this report.*
- iii) *Provided delegation to the Director of City Development, with the concurrence of the Deputy Chief Executive and Executive Member for Development and the Economy, to enter into a development agreement and grant agreement with the preferred bidder, up to the maximum amount stated in exempt Appendix 1.*
- iv) *Noted that the Chief Asset Management and Regeneration Officer will be responsible for implementation of these actions.*

2.5 In agreeing recommendation i), paragraph 3.15 was approved as the principles to guide the Council's role in the disposal. Paragraph 3.15 of the report stated

It is proposed that the Council will include the Engine House site in the procurement exercise, adhering to the following principles:

- *The Council has full and sole control over the lot for the disposal of the Engine House site.*
- *The decision to select a developer for the Engine House site will be a separate decision to the HCA decision to select a developer for the HCA site. The Engine House site disposal will have its own evaluation criteria to select a preferred bidder.*
- *If required, the Council will make a financial grant available to bring about the refurbishment of the Engine House site. In seeking bids, the amount of grant available will not be revealed, and prospective bidders will be asked to identify if they require any funding to refurbish the Engine House site and, if so, how much and demonstrate why financial assistance is required.*
- *The Council retains absolute discretion to withdraw the Engine House site from the procurement exercise and seek to dispose of the site through other methods should it choose to do so.*

2.6 In 2014, in accordance with the Council's Contract Procedure Rules, the Director of City Development approved the procurement methodology for the competition for the Council controlled lot – a lot run in accordance with the competitive dialogue procedure. This included a PQQ stage to evaluate a company's financial and legal standing, experience and track record followed by a competitive dialogue phase with criteria agreed for the ultimate selection of a developer.

2.7 In 2014, the Director of City Development approved recommendations to select bidders who passed through PQQ stage to continue through to the competitive dialogue stage.

2.8 In August 2015, the Director of City Development agreed recommendations to select Carillion (Maple Oak) Ltd as preferred developer for the Engine House. A letter was issued to Carillion (Maple Oak) informing them that they had been selected as preferred developer on the basis of:

- 1) *The contents of Carillion's bid for the Engine House;*
- 2) *The financial offer not being in any way amended;*
- 3) *The Council, Carillion and Homes and Communities Agency (HCA) completing a Deed of Rectification relating to access rights and rights to erect scaffolding around the Engine House and on land currently owned by the HCA and a Management Agreement in accordance with the transfer of the Engine House and the Italianate Towers from the HCA to the Council; and*
- 4) *The completion of the development agreement and grant agreement and associated documents between the Council and Carillion.*

2.9 The Council has not entered into contract with Carillion (Maple Oak) Ltd – the development and grant agreements have not been exchanged or completed.

- 2.10 In a separate and independently taken decision, Homes England selected and contracted with Carillion (Maple Oak) Ltd as preferred developer to redevelop the Homes England owned sites through lot 1.
- 2.11 In parallel to this, Carillion (Maple Oak) Ltd secured Planning Consent, subject to discharge of conditions for the redevelopment of the Homes England site and also secured listed building consent for the redevelopment of the Engine House.
- 2.12 No meaningful construction works have started on site and the planning consent has not been implemented. No works have been undertaken at the Engine House by Carillion (Maple Oak) Ltd.

3. Main issues

- 3.1 As highlighted above, Carillion (Maple Oak) Ltd and the Council are not in contract with one another. Carillion (Maple Oak) Ltd retain preferred bidder status on the basis of the points highlighted at point 2.8.
- 3.2 In January 2018, Carillion (PLC) as well as other Carillion subsidiary companies entered into liquidation. Carillion (Maple Oak) Ltd, as a wholly owned subsidiary of Carillion (PLC), is not in liquidation.
- 3.3 The Engine House is an important listed building and the Council's intentions has always been to secure its timely restoration and refurbishment for the proper planning of the area. The developer competition started in 2014, preferred bidder status was awarded in 2015. Given the Engine House's status as a listed building in a priority regeneration area, the Council requires confidence and certainty that the proposals of a developer will result in a timely restoration of the building.
- 3.4 In this context and the liquidation of Carillion PLC, it is proposed that the Council determines whether it is in the public interest for to proceed with the procurement competition and award a contract to Carillion (Maple Oak) Ltd or seek to terminate the procurement competition.
- 3.5 Accordingly, the Council wrote to representatives of Carillion (Maple Oak) Ltd with questions about the financial standing of Carillion (Maple Oak) Ltd and their ability to develop the Engine House given the liquidation of their sole owner and parent company. In addition, the letter sought clarity on Carillion (Maple Oak) Ltd's intentions for the Engine House and at the Homes England owned wider site.
- 3.6 The Council articulated that it was reviewing its options for the redevelopment of the Engine House and its options with regards to the procurement exercise.
- 3.7 Carillion (Maple Oak) Ltd's response and the Council's appraisal of this is detailed in exempt appendix 1.
- 3.8 In light of what is set out in exempt appendix 1, it is considered that there are material changes to a) the contents of Carillion's bid, b) the financial offer and that these changes impact on c) contractual terms between the Council and Carillion (Maple Oak) Ltd.
- 3.9 On balance of the case put forward, it is considered that there is too much change in circumstance and uncertainty in the position put forward to provide the Council with confidence that its requirements could be currently met by Carillion (Maple Oak) Ltd. Due to the reasons as set out at exempt appendix 1, it is recommended that it would not be in the public interest to continue with the procurement process. It is therefore proposed that the Council abandons the procurement exercise without award of a contract.

3.10 A future report will be prepared advising on how a development of the Engine House can be taken forward in a timely manner.

4. Corporate considerations

4.1 Consultation and engagement

4.1.1 The contents of this report have been subject to consultation with the chair of the evaluation panel who led the procurement exercise, the Council's financial team and in house legal services.

4.1.2 The Executive Member for Regeneration, Transport and Planning has been consulted

4.1.3 The Council has informed Homes England of its intentions.

4.2 Equality and diversity / cohesion and integration

4.2.1 There are no equality and diversity/ cohesion and integration implications arising from these recommendations.

4.3 Council policies and best council plan

4.3.1 Securing a timely restoration of the Engine House would achieve Best Council Plan objectives to achieve sustainable and inclusive growth.

4.4 Resources and value for money

4.4.1 Terminating the procurement process does mean that the Council efforts in recent years is abortive. However, it is considered that continuing with the procurement process would incur extra costs and time with no guarantee on a satisfactory outcome being achieved. The Council's incurred some external marketing and advertising costs – around 5k in running the competition.

4.4.2 The Director of City Development is advised that throughout the procurement process, all documents have highlighted the Council's rights to terminate the procurement competition and how the Council would not be responsible for paying any losses or expenses of bidders. The procurement documents set out how:

- *The Council accepts no liability with regards to the bidders costs to participate in this competition or as to the actual amount of work included within any bid. The Council will not be responsible for, or pay, any losses or expenses which may be incurred by the bidder in the preparation and submission of their bid, including (but not limited to) PQQ and tender documents, the attendance at any dialogue meetings, the delivery of any presentations by the bidder to the Council in relation to their bid, site visits or other discussions. Bidders are participating in this exercise at their own risk.*

4.5 Legal implications, access to information, and call-in

4.5.1 This is a Significant Operational but is not subject to call-in. The contents of exempt appendix 1 are considered to be exempt from publication, under access to information rule 10.4 (3) as publishing the information may undermine the

commercial operations of Carillion Maple Oak (Ltd) as will see contents of their bid, financial offer and intentions as an operating business published.

- 4.5.2 The rules surrounding the notification requirements when a tendering exercise is abandoned dictate that we have to advise candidates and tenderers that we are not going to award a contract for which there has been a call for competition and where requested, we must inform candidates or tenderers of the reasons for the rejection of tenders. This information must be provided as soon as possible and in any event within 15 days of our receiving a written request. Carillion (Maple Oak) Ltd has been informed verbally of the proposed recommendations and the rationale why and a written response will be issued.
- 4.5.3 As with any decision there is a risk of potential challenge and it is possible that Carillion (Maple Oak) Limited may try to claim compensation either for costs incurred due to the procurement exercise being abandoned or for lost profits which may have been generated if the contract had been awarded to them. However, the courts have been very reluctant to support such claims and due to the circumstances set out at the exempt appendix above it is considered that the risk of such a claim is low.

4.6 Risk management

- 4.6.1 There are risks that the decision could be challenged as per the advice set out at section 4.5.
- 4.6.2 There may be risks that abandoning the procurement may affect the future development of the Engine House. However, the Council retains rights to access the Tower Works site to undertake a refurbishment of the Engine House and has the necessary legal rights to develop the Engine House.
- 4.6.3 With regards to the relationship to Lot 1, it has always been documented that the decisions for each lot are independently made and it is not a requirement for the same developers to be selected for each lot.

5. Conclusions

- 5.1 In 2015, Carillion (Maple Oak) Ltd, a wholly owned subsidiary company of Carillion PLC, was selected as preferred developer for the Engine House. This was on the basis of the contents of their bid, their financial offer not being in any way amended and successful completion of legal agreements.
- 5.2 It is proposed that, for the reasons set out in exempt appendix 1, it is in the public interest to abandon the procurement process without an award of contract.

6. Recommendations

- 6.1 The Director of City Development is asked to
- i) Note the contents of this report.
 - ii) Agree that the procurement competition (Ref No: DN187182) to secure a developer partner for the restoration of the Engine House is terminated without an award of contract to the preferred developer (Carillion Maple Oak (Ltd)) for the reasons set out at exempt appendix 1.

- iii) Note that the Principal Regeneration Officer will be responsible for implementing these actions.

7. Background documents¹

7.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.