

# Public Document Pack

## **EXECUTIVE BOARD**

**15<sup>TH</sup> FEBRUARY 2013**

### **LATE ITEMS OF BUSINESS:**

- 1) LEEDS ARENA, LEGAL ACTION, MONTPELLIER ESTATES LTD
- 2) LITTLE LONDON & BEESTON HILL & HOLBECK HOUSING PFI PROJECT

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**LATE ITEM**

Report author: Chris Coulson

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**Report of :** Director of City Development  
**Report to :** Executive Board  
**Date:** 15 February 2013  
**Subject:** LEEDS ARENA, LEGAL ACTION, MONTPPELLIER ESTATES LTD

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	CITY & HUNSLET	
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?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:	10.4 (3) & (5)	
Appendix number:	1	

## Summary of main issues

1. The report details the background to Montpellier Estates Limited's (MEL) legal claims against the City Council arising from the termination of the procurement process undertaken by the City Council to appoint a developer for the Leeds arena.
2. It summarises the main findings of the Hearing held at the High Court, London in autumn 2012 and, outlines the proposed action to be undertaken to recover costs incurred by the Council in successfully defending the claims brought by MEL against the City Council.
3. Members of Executive Board should note that this report is submitted as a late item, as the decision on the legal proceedings between the City Council and MEL was only handed down by the Rt. Hon. Mr Justice Supperstone on 6 February 2013. It was not possible for this report to be included within the formal agenda papers, however, it was deemed appropriate that Board Members be provided with a summary of the main finding of the Hearing at the earliest opportunity and, there is a need for the City Council to determine the approach to be pursued for the recovery of costs incurred by the Council in the legal action that can not wait until the next meeting of the Executive Board in March 2013. Accordingly, the report has been submitted as a late item of business.

## Recommendations

3. Executive Board is requested to:-
    - i) Note the content of the report;
    - ii) Instruct and authorise the Director of Resources in consultation with the City Solicitor, to take all appropriate measures to ensure that the City Council maximises the costs recovered in successfully defending the claims brought by MEL against the City Council.
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### 1 Purpose of this report

- 1.1 The purpose of this report is to summarise the main findings of the judgement handed down by the Right Honourable Mr Justice Supperstone (Mr Justice Supperstone) on 6 February 2013, concerning the two actions brought by MEL against the Council relating to the competition held by the Council in 2007 and 2008 for the development of the Leeds arena. The report also outlines the proposed action to be pursued by the City Council to recover costs incurred by the Council in successfully defending the claims brought by MEL against the City Council.

### 2 Background information

- 2.1 MEL's legal claim against the City Council arose out of the procurement process undertaken by the Council using the Competitive Dialogue Procedure to appoint a developer for the Leeds arena.
- 2.2 In February 2009, following the Executive Board's decision at its meeting on 5 November 2008 to terminate the developer procurement competition without the award of a contract and, as a consequence of this decision to lead on the delivery of the arena itself, MEL submitted a claim against the Council for damages for breach of statutory duty pursuant to the Public Procurement Regulations 2006 and breach of contract. Specifically, MEL challenged the decision of the Council to abort the tender procedure and proceed with the proposed arena development on land it (the Council) now owned at Clay Pit Lane.
- 2.3 In May 2010, the City Council received notice from lawyers representing MEL that it was considering issuing a deceit claim against the Council in addition to the claim for alleged breaches of procurement legislation. The deceit action was issued on 14 December 2010.
- 2.4 In the deceit claim, MEL alleged that the Council (Council officers, Council Member and/or agent's of the Council) deceived it into entering and/or remaining in the procurement competition by false representation on the part of the Council to the effect that the Council had no preference for the arena to be built on its own land at Elland Road, that MEL was not a 'stalking horse' for the Council's own development of the arena, that the Council did not want to develop the arena itself and that the developer competition would be fair and transparent.
- 2.5 It was alleged by MEL that the Council had a preference for Elland Road, that MEL was a stalking horse, that the Council did want to build the arena itself and that the competition was not fair and transparent. MEL maintained this claim on the basis that the Council concealed from the company its own "Plan B" proposal to build the arena on its own site, that MEL was essentially bidding against the Council's Public

Sector Comparators (PSCs) based on development of its own sites at Clay Pit Lane and Elland Road and, that a flawed process was involved in comparing MEL's submission as against the PCSs that included, amongst other things, the misuse by the Council of the process of 'normalisation' and risk adjustment (used as part of the assessment process of the developer's best commercial submissions), so as falsely to show that MEL's submission made to the Council on 10 September 2008, did not represent value for money.

- 2.6 In the deceit claim MEL maintained that their main loss was the reduction in value of their City One site which formed the basis of the company's submission to develop the arena. MEL contended that had it not been for the representations it alleged were made by the Council, it would have sold the site prior to the collapse of the property market, which MEL argued was in late 2008. Since the fall in the property market, MEL maintained that it has not been possible for the company to sell City One. It was recognised that the calculation of damages would be dependent on the date of the alleged fraud and the date of the hypothetical sale of City One. MEL claimed in excess of £43.5 million in damages from the City Council, such damages representing a combination of the reduction in the value of its site, tax liabilities arising from holding the site longer than envisaged, costs incurred in servicing its debt in relation to the site and wasted costs incurred in the developer competition.
- 2.7 Members of the Executive Board should note that MEL's two claims (procurement and deceit claims) were consolidated on 23 May 2011, by Order of Master Eastman, with the deceit claim as the lead action.
- 2.8 The claims were heard in front of Mr Justice Supperstone in the High Court, London over an eight week period from 4 October 2012 through to 30 November 2012.

### **3 Main issues - Approved Judgement**

#### **3.1 Deceit Claim**

- 3.1.1 The Hon Mr Justice Supperstone handed down his judgement on 6 February 2013. A link to the Approved Judgement is here <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/QB/2013/166.html&query=leeds&method=boolean>
- 3.1.2 In respect of the deceit claim, Mr Justice Supperstone rejected in their entirety the allegations of fraud and dishonesty made against each of the eight (8) named individuals in the proceedings and, accordingly, the claim in deceit against the City Council failed.
- 3.1.3 In his judgement, Mr Justice Supperstone commented on each of the thirty two (32) representations relied upon by MEL in support of their deceit claim. In each instance, Mr Justice Supperstone accepted and/or preferred the evidence of the Council's witnesses and did not accept the evidence presented by Ms Fletcher or other MEL witnesses. Indeed, Mr Justice Supperstone comments in paragraph 346 of the Approved Judgement.

"I found the evidence of Ms Fletcher to be unsatisfactory in material respects, in particular in relation to the representations that she claimed LCC made about the Council not intending to build the arena itself, which became the cornerstone of the deceit claim. In some instances she may have misunderstood what was being said to her. However, in other instances she appears to have heard that she wanted or expected to hear. She has a tendency to exaggerate. In a few instances (the

dinner on 17 September 2007; the dinner on 30 October 2007; and the luncheon on 11 December 2007) I am not satisfied that the conversations she related took place at all. Her note taking was coloured by her focus on her overriding concern that LCC had a preference for the arena to be built on its own land at Elland Road. Her notes contain significant inaccuracies”.

3.1.4 Elsewhere in his judgement (para 390 of the Approved Judgement) Mr Justice Supperstone confirmed that in his view the developer competition was ‘fair and transparent’, that the City Council did inform MEL about the use of the PSCs and their true purpose at meetings between 29 May and 14 July 2008, that the PSCs were not competing bids and that the Council’s Plan B was and remained a contingency plan. Mr Justice Supperstone goes on to say at paragraph 390 of the Approved Judgement:-

“In my view LCC acted throughout the (developer) competition in good faith. It took and acted upon legal advice as to compliance with public procurement law .... It is clear in my view that LCC embarked on the private developer competition because it did not want to develop the arena itself but wanted a private sector developer to bear the development risk and that remained the position until the Executive Board decided to terminate the competition on 5 November 2008”.

3.1.5 Furthermore, Mr Justice Supperstone confirmed that in his view the representation that MEL was not a ‘stalking horse’ was true when made and remained true (para 391 Approved Judgement) and, he rejected MEL’s suggestion that LCC “played with the figures” in order to get the figures on the PSC below those of the (developer) bidders” (para 395 of the Approved Judgement).

## 3.2 The Procurement Claim

3.2.1 MEL alleged that the City Council acted in breach of the Public Contract Regulations 2006, specifically that:-

3.2.1.1 The Council was in breach of its duty of transparency in not disclosing the true nature of Plan B to MEL.

3.2.1.2 A competition between the Council’s Plan B/PSC and the private developers was inherently unequal and lacking transparency.

3.2.1.3 There was a lack of transparency and fair treatment in the scoring of the bids.

3.2.2 Mr Justice Supperstone in his Approved Judgement (paragraphs 460 to 462 inclusive) advised that from 29 May 2008 onwards the Council informed MEL as to the PSC as it evolved and, that MEL were informed of and understood the true nature and purpose of the PSCs; that there was no competition between the Council’s Plan B/PSC and the private developers and that there was no scoring of “bids” as that stage in the competition had not been reached when the developer competition was terminated by the Council’s Executive Board at its meeting on 5 November 2008. Mr Justice Supperstone found that the Council’s evidence of how it assessed MEL’s proposal was “never seriously challenged”, that the City Council was entitled to develop this (Public Sector Comparator) fall back option and again found that MEL’s claim failed.

### **3.3 Costs**

- 3.3.1 As the City Council has won the case both in respect of the deceit and procurement claims, it will be entitled to payment from MEL of its reasonable costs of the case. Members of the Executive Board should note that the Council's total legal costs as at the date of report preparation are estimated to be in the region of £4.6m, which may increase if further hearings in relation to the payment of costs and an application by MEL is made to appeal the decision. In part, the scale of the City Council's costs relate to the complexity of the case and, the fact that the Council had to defend and defeat 32 representations that MEL allege were made by the Council, its employees and/or agents in order to induce MEL to enter into and/or continue in the developer competition spanning a period covering more than 3 years. It was a 'document heavy' piece of litigation, with very extensive disclosure obligations (electronic and hard copy) placed on the Council, plus the compilation of 26 detailed witness statements, the preparation of expert evidence and numerous pre trial case management conferences and hearings.
- 3.3.2 Further information in respect of the Council's approach to ensuring that it maximises the recovery of its legal costs from MEL are detailed in the Appendix of the report, the content of which is Exempt/Confidential under Access to Information Procedure Rules 10.4(3) and (5),

### **3.4 Possible MEL Appeal**

- 3.4.1 It is apparent from the press release issued by Ms Fletcher that MEL may appeal the Approved Judgement of Mr Justice Supperstone. Members of the Executive Board should note that if MEL intends to appeal the decision it will be necessary for it to obtain permission to do so. MEL may apply to Mr Justice Supperstone as the trial judge or directly to the Court of Appeal. MEL has 21 days from the decision to apply for permission to appeal the decision.
- 3.4.2 Further information on the possibility of MEL appealing the decision is detailed in the Appendix of the report, the content of which is Exempt/Confidential under Access to Information Procedure Rules 10.4(3) and (5).

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The City Solicitor has been consulted and is supportive of the recommendations detailed in the report.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 There is no expected impact on the protected equality characteristics and, therefore, it is not applicable for an EIA or screening form to be completed at this time.

### **4.3 Council Policies and City Priorities**

- 4.3.1 The Vision for Leeds 2004 to 2020 identifies a major project to improve the cultural life of the City, including developing a new, large scale international cultural facility such as an arena.

#### **4.4 Resources and Value for Money**

- 4.4.1 Members of Executive Board are asked to refer to the content of paragraph 3.3.1 above and the Appendix of the report, the content of which is Exempt/Confidential under Access to Information Procedure Rules 10.4(3) and (5).

#### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 The Appendix to this report is treated as Exempt as it details the actions likely to be pursued by the Council in recovering its legal costs from MEL and comments on the potential of MEL progressing an appeal of the decision. The content of the Appendix would be covered by legal privilege, as it includes the substance of communications between the Council and its lawyers, where the purpose of those communications is the giving of legal advice. It is acknowledged that there is a strong element of public interest inbuilt into the privilege itself and, that the general maintenance of confidentiality between client and lawyer is a matter which is in the public interest. Conversely, whilst there is always some public interest in disclosure and whilst there may be relatively strong public interest in the public knowing about the way forward in respect of the recovery of legal costs and the potential of an appeal, it would seem there is little public interest in the disclosure of the advice and information contained in the Appendix.
- 4.5.2 It is, therefore, considered that in all the circumstances of the case, the public interest in maintaining the content of the Appendix as Exempt outweighs the public interest in disclosing the information contained in the Appendix. In addition, the Appendix contains information about an individual's and companies financial and business affairs.

### **5 Recommendations**

- 5.1 The Executive Board is requested to:
- 5.1.1 Note the content of the report.
- 5.1.2 Instruct and authorise the Director of Resources in consultation with the City Solicitor, to take all appropriate measures to ensure that the City Council maximises the costs recovered in successfully defending the claims brought by Montpellier Estates Ltd against the City Council.

### **6 Background documents<sup>1</sup>; None**

<sup>1</sup> 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.



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**LATE ITEM**

Report author: Adam Brannen

Tel: 24 76746

**Report of Director of Environment & Neighbourhoods**

**Report to Executive Board**

**Date: 15<sup>th</sup> February 2013**

**Subject: Little London & Beeston Hill & Holbeck Housing PFI Project**

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Beeston & Holbeck City & Hunslet Hyde Park & Woodhouse		
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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, Access to Information Procedure Rule number: 10.4(3). <b>Appendix B</b> to this report contains exempt information under Access to Information Rules 10.4 (3) as it contains commercially sensitive information on the Council's approach to procurement issues and in relation to the Preferred Bidder, where the benefit of keeping the information confidential is considered greater than that of allowing public access to the information.		

**Summary of main issues**

1. The Little London and Beeston Hill & Holbeck PFI project commenced procurement in July 2007 but has been subject to a series of delays with the result that it has not yet been able to achieve Financial Close. The Council is working closely with the Preferred Bidder consortium to assist its funders in completing remaining due diligence arrangements that will enable this.
  
2. However new uncertainty relating to Government requirements on finance and project documentation has been introduced to the project at a very late stage which means that financial close will be further delayed.
  
3. The Council has secured a commitment from Government that it will continue to support the project and is keen to secure financial close as quickly as possible in order to begin this major investment in the city to realise the long awaited improvements to tenants homes and estates. A best case scenario for this is now estimated as July 2013.

4. The Council's commitment to Little London, Beeston Hill and Holbeck extends beyond the PFI investment. The report sets out activities that are underway or being planned for other housing in the project areas through new build and refurbishment and for improvements to the Little London local centre ('community hub').

## **Recommendations**

Executive Board is recommended to:

- (i) Confirm the Council's continued commitment to securing PFI housing investment for the neighbourhoods of Little London, Beeston Hill and Holbeck;
- (ii) Note the current position on procurement of the project and the delays in reaching Financial Close and agree that the strongest possible representations be made to Government in clarifying and resolving its new requirements;
- (iii) Note and support the separate regeneration projects that are underway or planned in the Beeston Hill, Holbeck and Little London areas;
- (iv) Approve that the first call is made on the capital receipt from the sale of land at the Little London Community Hub to fund the relocation of the Neighbourhood Housing Office and reprovision of new community centre facilities.
- (v) Note that a further report setting out the confirmed financial position and a revised programme for financial close will be reported to Executive Board at the earliest opportunity.

## **1. Purpose of this report**

- 1.1 This report updates Executive Board on the current position of the Little London and Beeston Hill & Holbeck PFI Housing project and provides a chronology of its delayed procurement.
- 1.2 The report also sets out actions that the Council is taking to secure other improvements in the project areas in advance of and alongside the PFI works.

## **2 Background information**

2.1 The Little London and Beeston Hill & Holbeck project will be a major investment in the regeneration of three of Leeds' most deprived neighbourhoods and will have a major, positive and sustained impact on the lives of tenants, residents and businesses in these areas.

2.2 The main programme of works will include refurbishment of the 1245 Council homes to high standards of energy efficiency, construction of 388 new Council homes to high environmental standards and environmental improvements to the estates. The main housing outputs to be delivered through the project will be:

### *2.3 Little London:*

- 848 homes to be refurbished (includes removal of 16 bed-sit flats);
- 113 new homes built (Carlton Gate site where 145 outdated flats were demolished in 2010);
- renovation and improvement of the estate environment.

### *2.4 Holbeck :*

- 374 homes to be refurbished, plus conversion of Ingram Court to 23 self contained units and the Ingram Gardens sheltered housing community facility;
- 108 new homes built (on the Holbeck Towers site where 300 outdated flats were demolished in 2010);
- renovation and improvement of the estate environment

### *2.5 Beeston Hill :*

- 167 new homes built (across 8 sites where 222 outdated maisonette flats have been emptied in anticipation of the project).

- 2.6 The project will also ensure that the benefits of investment are secured for the Leeds area in the form of employment and training opportunities. The PFI contractor will work closely with the Council and the network of training providers in the city to deliver apprenticeship/traineeships, safeguard and create jobs for local people, provide construction work experience opportunities and create a number of social enterprises.
- 2.7 The project will be delivered through the initial capital investments as described above made within the first 4 years, with ongoing repairs and maintenance of the housing and estate areas for 20 years.
- 2.8 The Council has worked closely with the bidders in the process at each stage of the procurement and particularly with the Preferred Bidder, the Government's Department of Communities and Local Government (CLG) and the Homes and Communities Agency (HCA) to resolve a series of complex challenges that have resulted in delays to the procurement. The project has yet to reach Financial Close, which would enable the contract to be signed and the works and services contract to mobilise and commence.
- 2.9 Executive Board has received a series of reports relating to the project over the last 7 years. A table summarising these is provided at Appendix A.
- 2.10 The potential for significant investment in the housing and estate of Little London has been in discussion since the early 2000's. An Outline Business Case (OBC) for a project to build new homes and refurbish existing properties was endorsed by HM Treasury in 2006 and was part of the round two bid for PFI credits.
- 2.11 The Beeston Hill & Holbeck project was included as part of the round 5 programme of PFI credits in early 2007 and the City Council submitted its OBC in November 2007. This OBC proposed a joint procurement with the Little London project, an approach that was endorsed by Government in March 2008.
- 2.12 Procurement for the project formally commenced in July 2007, through publication of a tender notice in the Official Journal of the European Union (OJEU), which enabled the City Council to progress the Little London project independently or as part of a larger project with Beeston Hill & Holbeck, subject to Government approval. It was originally anticipated that it would take up to 3 years to reach Financial Close.
- 2.13 Expressions of Interest were received and four consortia qualified to enter into a formal process of 'competitive dialogue' with the Council, through which de-selection of tenders was made at progressive stages.
- 2.14 The Outline Solutions stage of procurement commenced in November 2007, with three consortia selected to proceed to further dialogue in April 2008 and invited to submit Detailed Solutions from June 2008. This stage of dialogue was concluded in October 2008 with the Project Board agreeing the results of evaluation in December 2008.

- 2.15 At that stage the project anticipated the disposal of Council owned land through a related Development Agreement in order to provide additional private housing across the project areas as part of a mixed tenure approach to regeneration and to make a financial contribution to the project. The original project scope also included replacement retail provision, community facilities and housing office within the 'community hub' in Little London, funded through a land value return arising from sale of development sites under the Development Agreement.
- 2.16 However during the course of 2008, the full effects of the 'credit crunch' and rapid decline in the housing market at that time became apparent. This was reflected in pricing relating to the Development Agreement which could not meet the City Council's needs and requirements and there was little or no prospect that the housing market would improve significantly prior to the planned date for final tenders to be submitted.
- 2.17 A re-scope of the project was required to remove the market housing and the capital contributions associated with this. This resulted in a change in balance between new build and refurbishment outputs, the removal of new build proposals for the Waverley Garth and Malvern Rise sites (but continuing with their demolition) and transferred the Little London Community Hub into the PFI funding envelope. It also created a delay in moving to the next stage of procurement.
- 2.18 The scope changes were agreed with the bidding consortia, Government and approved by the City Council's Executive Board on 4th March 2009. A further amendment was made in December 2009 when the Council agreed to undertake separate demolition of the Carlton Gate and Holbeck Towers sites in advance of the PFI project starting. The resulting project scope was confirmed again by the HCA in August 2010
- 2.19 The Refined Solutions stage of the procurement commenced in March 2009, with two remaining bidding consortia invited into further dialogue. Interim bid submissions were received on time in August 2009, but final bids could not be requested until a number of commercial issues were resolved with the sponsoring Government Departments, which took far longer than anticipated. Final tenders were received in September 2010 and a Final Evaluation Panel in October 2010 selected a proposed Preferred Bidder. In order to formally notify the Preferred Bidder and to complete the procurement, a first stage approval by Government of a Final Business Case (FBC) was required. This 'Pre Preferred Bidder' FBC was submitted in October 2010 and in normal circumstances should have taken up to 2 months to review and confirm.
- 2.20 However in January 2011 the Council was informed by the new Government of the implications for the national PFI housing programme of the November 2010 Comprehensive Spending Review, which required a fundamental review of the value for money of those projects still in procurement. The detailed requirements were made available in March 2011 and the Council's response was submitted to the HCA in May 2011 following detailed work with both it and the proposed Preferred Bidder. Changes to the project to enable the revised submission to meet new VFM benchmarks included removal of the Little London Community Hub redevelopment and removal of the demolition of the Waverley Garth and Malvern Rise sites in Beeston Hill.

- 2.21 The VFM submission received CLG ministerial approval in June 2011. However further delays were incurred when HM Treasury requested a revised 'Pre Preferred Bidder' FBC, which although submitted in the same month was not approved until October 2011, a year after the proposed Preferred Bidder was originally identified.
- 2.22 The Preferred Bidder for the Project could not be confirmed straight away as had been planned, as market changes in the intervening period had an impact on the proposed sub-contract arrangements and the banking arrangements to provide loan funding support for the project. The Preferred Bidder consortium – Sustainable Communities for Leeds (Sc4L) – was able to finally be confirmed on 27<sup>th</sup> January 2012 with all parties approving the arrangements to move forward to Financial Close.
- 2.23 At that time it was intended that the contract was to be let by the end of March 2012 and to commence from 1<sup>st</sup> July 2012, subject to final approvals from Government (the 'Pre Financial Close FBC), confirmation of the required PFI credits for the Project, funders completing due diligence and securing Credit Committee approval. The Council issued local newsletters to tenants and residents with these timescales included.
- 2.24 This process has taken much longer than anticipated. In January 2012 the Council was informed that one of the consortium members was involved in a corporate merger and restructuring. This was completed in March 2012, but was followed by a corporate re-financing exercise that was not finished until November 2012. This has further delayed the completion of the project funders' due diligence.
- 2.25 At the end of May 2012 the Council was also informed that one of the three bank funders to the consortium was unable to continue to support the project. The majority of the project's funding requirements would continue to be met by two remaining banks but also required the Council to reprofile its affordability contribution, which was agreed by Executive Board at its meeting in July 2012.

### **3 Main issues**

- 3.1 The procurement has recently encountered further delays to reaching Financial Close, which had been programmed for December 2012, but was not achieved as a result of the ongoing due diligence being undertaken by the consortium's funders and incorporation of new commercial drafting into the Project Agreement as required by Treasury and notified to the Council in late December.
- 3.2 The new drafting is to reflect some elements of the emerging new 'PF2' funding regime, but the details have yet to be clarified fully despite the Council requesting a response in early January. PF2 ('Private Finance 2') is the Government's proposed new approach to obtaining private finance for public infrastructure projects and is understood to represent a rebalance of the PFI risk allocation profile and a move away from a very limited and more expensive bank funded market to a bigger bond funded market with long term finance available on relatively lower levels of financing costs.



- 3.3 In late January the Council was contacted by the HCA and told that Treasury would not accept the financial terms negotiated for the funding of the project. The Council is now in dialogue with the various Government departments to address these new matters raised at such a late stage.
- 3.4 In aggregate, the delays in procurement currently amount to 2 years and 3 months. A best case scenario is now that Financial Close could be achieved by July 2013. The causes of these delays have been largely outside of the direct control of the Council, being driven by external economic factors, Government reviews of funding requirements and project documentation and commercial matters specific to the Preferred Bidder.
- 3.5 Nevertheless it must be recognised that the ongoing impact has been most keenly felt by those tenants and residents in the project areas who in some cases have now been waiting up to 10 years for improvements to their homes and living environment. As the Council has not been able to control the causes of delays it has proved extremely difficult to offer consistent and meaningful communication with the local communities and other stakeholders on the progress of the procurement and when this situation may be rectified.
- 3.6 There have been a number of occasions on which a programme for reaching Financial Close has appeared almost certain, only for a further delay to arise. This has proved a source of frustration and disappointment for both the Council and local people.
- 3.7 The Council remains firmly committed to obtaining the PFI investment and to realising the improvements to tenants' homes and estates. The Preferred Bidder has also restated its commitment to the deal.
- 3.8 There is also a commitment on the Council's part however to ensuring regeneration of these areas is delivered through means other than just PFI. Alongside the ongoing efforts of the Council to work with all parties to conclude the procurement as quickly as possible, there are some separate measures that are being progressed to deliver improvements in the Little London & Beeston Hill areas, in advance of the PFI works, which are set out in the sections below.
- 3.9 Further details in relation to the latest delay are set out in the Appendix B. This is an Exempt Appendix under Access to Information Rules 10.4 (3) as it contains commercially sensitive information on the Council's approach to procurement issues and in relation to the Preferred Bidder, where the benefit of keeping the information confidential is considered greater than that of allowing public access to the information.

### **Little London Community Hub**

- 3.10 The Community Hub site currently provides 7 council-owned retail units (now largely vacant), a Neighbourhood Housing Office, community centre, car parking, play area and public open space. Following confirmation of its removal from the PFI project scope in October 2011, alternative options for redevelopment of the site and refresh of the local facilities have been explored.

- 3.11 Alongside this work the requirement for new primary school capacity in the area has emerged. At its meeting of December 2012 Executive Board approved publication of a statutory notice for expansion of Little London Primary school on the Community Hub site.
- 3.12 The revised approach to the site therefore involves the expansion of the Primary School to 3 forms of entry, relocation of the Neighbourhood Housing Office (NHO) within the site, refurbishment or rebuild of the community centre and securing investment from a private retail concern to provide a new local convenience store.
- 3.13 Feasibility work is currently underway to ascertain the land requirements for the expanded primary school and how the community centre and Neighbourhood Housing Office would be accommodated on-site.
- 3.14 The site currently occupied by the NHO has been market tested for interest from retailers and the Council is in discussions with a national retailer regarding a sale and redevelopment of this part of the site. Upon sale and once the new retail is operational, the existing Council-owned shops will be closed and demolished to facilitate the expansion of the school and creation of new community buildings.
- 3.15 The NHO will occupy a temporary facility on-site (adjacent to the existing community centre) during this redevelopment process – a planning application for this was submitted in January 2013.
- 3.16 The site feasibility work will be completed by March of this year, with a view to the school expansion being fully complete and open by Sept 2015. Subject to contract, the Council anticipates that the new retail facilities could be trading by January 2014, with the community centre and NHO complete later in 2014.
- 3.17 The funding package for work across the site currently comprises the schools Basic Needs Programme and the Housing Revenue Account. It is proposed that there is a first call on the capital receipt from sale of the existing NHO site, to fund the legitimate costs associated with the relocation of the NHO and re-provision with the new community centre facilities. This is on the basis that this disposal (and the receipt arising) would not be possible without the reconfiguration of the facilities on-site.

### **Refurbishment of Homes in Beeston Hill**

- 3.18 Two sites in Beeston Hill that were intended for demolition through the PFI project will now be retained and refurbished. The Waverley Garth and Malvern Rise sites have a combined 87 homes.
- 3.19 Work has now been undertaken to assess how these properties can be brought up to Decent Homes standard to complement the intended investment elsewhere in the estate through PFI investment. Design feasibility has been undertaken for the refurbishment of these properties to Decency 'plus' standards. The total cost for works to all 87 units is estimated at £2.53million. It is anticipated that this work will commence on site in 2013, with completion by May 2014 to be funded from the Housing Revenue Account.

## **Refurbishment of Homes in West Hunslet**

- 3.20 Work is underway with Aire Valley Homes and Leeds Federated Housing Association to refurbish and bring back into use 21 back-to-back properties in the Garnets area of West Hunslet. Seven properties managed by the ALMO have been brought back into use following refurbishment to Decent Homes standard; work is progressing on the remaining 14 over the course of the next 6 months.

## **New Homes in Holbeck & West Hunslet**

- 3.21 The Council is in discussions with Unity Housing Association to deliver 41 new affordable homes on a site at Brown Lane East in Holbeck, that has previously been cleared of back-to-back properties. The properties will comprise flats and houses for both affordable rent and to be available on a shared ownership basis.
- 3.22 The Homes and Communities Agency has confirmed that Unity has been allocated grant funding under the Affordable Housing Programme 2011-15 for this development.
- 3.23 A report will be brought to the Executive Board's next meeting in March in relation to the terms of disposal of the site to Unity HA. Subject to approval it is anticipated that a planning application could be submitted in the Spring with the aim of commencing the build programme in October 2013 for completion in late 2014.
- 3.24 The Council is also exploring options for the redevelopment of the Garnets site in West Hunslet, where 78 back-to-back properties were demolished in between 2010-12. There is potential for the construction of 20 new affordable homes on this site.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 Consultation has been undertaken throughout the project development and procurement process, varying according to the stage reached.
- 4.1.2 On the matters specific to this report the Executive Member for Neighbourhoods, Planning and Support Services has been briefed regularly on the ongoing discussions with all parties involved in seeking to resolve the issues preventing completion of procurement. Ward members and the MP for Leeds Central have also been updated on the latest position.
- 4.1.3 Letters will be issued to all tenants and residents in the project areas and a meeting has been held with local community representatives providing an update on matters referred to in this report.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 The project has undergone an Equalities Impact Assessment, which has been subject to regular review throughout the procurement period. The Assessment

has focused on both the impact of benefits to be realised as a result of the project outputs, along with that of the ongoing consultation and engagement with stakeholders, including local communities. The Impact Assessment highlights actions and issues such as:-

- ensuring all services will be accessible to a wide range of users based on age, ability and ethnicity/language;
- consultation and engagement designed to be inclusive of tenants, residents and other stakeholders in the project areas;
- ‘Plain English’ used in all publications; and
- all works and services to meet the requirements of the Disability Discrimination legislation and Equality Act 2010.

4.2.2 Other projects referred to in the report have been subject to their own separate EDCI screenings and assessments undertaken where appropriate.

### **4.3 Council policies and City Priorities**

4.3.1 The PFI scheme and other projects referred to in the report will contribute to the City Priority Plan, by making this part of the City a ‘better place to live’, contributing to the improvement of ‘health and welfare’ and contribute to improving local communities. In particular, it will address key priorities to:

- § Increase the number of affordable and decent homes;
- § Improve energy efficiency of those homes and reduce the number of people who are not able to adequately heat their homes;
- § Improve the quality and sustainability of the built and natural environment;
- § Address neighbourhood problem sites; improve cleanliness and improve access to and the quality of green spaces;
- § Provide opportunity for community engagement in the regeneration of their community;
- § Offer options for training and employment linked to the regeneration programme, and
- § Create safer environments and aid the tackling of crime.

### **4.4 Resources and value for money**

4.4.1 The financial position of the project and affordability assessment were reported to Executive Board in July 2012, based on a Financial Close at the end of that month.

4.4.2 Work is underway to reassess the implications of the further delay in reaching Financial Close although this cannot be fully completed until the nature of any changes to the terms of financing are known and the timetable for close is

confirmed. The Exempt Appendix provides a comparison of current anticipated project costs compared to the approach that the Council understands is being advocated by Treasury.

- 4.4.3 It is currently intended that the updated position and impact on affordability thresholds as previously agreed will be reported in full to the Executive Board at the next earliest opportunity.

#### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 This report has been introduced as a late item as the urgency of the issues and implications of further delays to the project require the immediate consideration of Executive Board. These cannot be reasonably delayed until the next meeting of the Board for reasons of good governance and transparency. The Chair of Scrutiny Board (Housing & Regeneration) has been briefed and agreed to the late submission.
- 4.5.2 Appendix B is exempt under Access to Information Rules 10.4 (3) as it contains commercially sensitive information on the Council's approach to procurement issues, financial information and commercial information in relation to the Preferred Bidder, where the benefit of keeping the information confidential is considered greater than that of allowing public access to the information.
- 4.5.3 There are no specific legal implications arising from this report, though it should be noted that concluding procurement and proceeding with the letting of the contract for the PFI Project is subject to final Government approvals of the funding arrangements and confirmation of approval to delegate the required housing management functions to the project under Section 27 of the Housing Act 1985. Approval in principle to the Section 27 consent was granted by the Tenant Services Authority in May 2012, and should only require confirmation on the basis of the updated Project Agreement reflecting the final commercial position of the project.
- 4.5.4 As previously reported to Executive Board, a final report will be submitted to the Director of Environment and Neighbourhoods prior to financial close to authorise the process for close and the final terms of documentation.

#### **4.6 Risk Management**

- 4.6.1 The Housing PFI Project Board is provided with monthly updates on risk management, with details provided on increasing risks and all high or very high risks.
- 4.6.2 Updates on risk management are also given to the Homes and Communities Agency to confirm that the City Council is appropriately managing the risks for the project.
- 4.6.3 However, as stated in the main body of the report, there is limited mitigation the Council can put in place for risks of delay where these are driven by changing external factors such as commercial financing and changes in Government requirements. Further risk considerations are included in the Exempt Appendix to this report.

## **5 Conclusions**

- 5.1 The Little London and Beeston Hill & Holbeck PFI Housing Project formally commenced procurement in July 2007 and it was anticipated at the time to reach Financial Close within three years.
- 5.2 The procurement has been confronted by a series of delays, many of which have been outside of the direct control of the Council, leading to the current position, five and a half years after the issue of an OJEU notice, that a date for Financial Close still cannot be confirmed.
- 5.3 Delays have included the credit crunch and recession impacting on project scope and the timetable for competitive dialogue; delays in Government approvals for project documentation; a requirement by Government to undertake a fundamental review of costs leading to a year of delay in confirming the preferred bidder; the requirement for the Council to re-profile its financial contribution to the project; delays in the Preferred Bidder consortium confirming its project financing and most recently further requirements by Government to change the basis on which the project may be finally closed.
- 5.4 The Council is continuing to work closely with the Preferred Bidder to resolve the outstanding consortium issues and to confirm the programme to Financial Close. The Council is also in dialogue with Government to ensure its latest requirements can be fully clarified and resolved as quickly as possible.
- 5.5 Alongside this work, activity is underway to ensure improvements in each of the project areas can be delivered in advance of and alongside the PFI investment. These include investment in new and existing housing in Beeston Hill & Holbeck and redevelopment of the Little London community hub.
- 5.6 Details of the updated PFI financial position and programme for the remainder of the procurement will be reported at the next earliest opportunity to the Executive Board, along with any further details on the Government's revised requirements.

## **6 Recommendations**

- 6.1 Executive Board is recommended to:
  - (i) Confirm the Council's continued commitment to securing PFI housing investment for the neighbourhoods of Little London, Beeston Hill and Holbeck;
  - (ii) Note the current position on procurement of the project and the delays in reaching Financial Close and agree that the strongest possible representations be made to Government in clarifying and resolving its new requirements;
  - (iii) Note and support the separate regeneration projects that are underway or planned in the Beeston Hill, Holbeck and Little London areas;

- (iv) Approve that the first call is made on the capital receipt from the sale of land at the Little London Community Hub to fund the relocation of the Neighbourhood Housing Office and reprovision of new community centre facilities.
- (v) Note that a further report setting out the confirmed financial position and a revised programme for financial close will be reported to Executive Board at the earliest opportunity.

## **7 Background documents<sup>1</sup>**

N/A

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<sup>1</sup> 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.

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## Appendix A – Little London, Beeston Hill & Holbeck Executive Board reporting summary

<b>Meeting</b>	<b>Report Title</b>	<b>Purpose of Report</b>	<b>Decisions</b>
<b>April 2006</b>	<b>Progress on Regeneration and Development Issues within Beeston Hill and Holbeck</b>	<p>Updated on the work of the Beeston Hill and Holbeck Regeneration Partnership Board on the formulation of a 15-20 year strategy for the area.</p> <p>Executive Board asked to approve the submission of the Expression of Interest for Beeston Hill and Holbeck, relating to the ODPM's Housing PFI Fifth Bidding Round in a mechanism to deliver part of the strategy for the area.</p>	<p>The principle of developing a comprehensive South Leeds regeneration scheme was agreed and the Vision for the regeneration of Beeston Hill and Holbeck was endorsed.</p> <p>Approved submission of the Expression of Interest for Beeston Hill and Holbeck, relating to the ODPM's Housing PFI Fifth Bidding Round, including a list of site opportunities.</p>
<b>May 2006</b>	<b>Little London Housing Private Finance Initiative – Outline Business Case</b>	Updated on the detailed options appraisal undertaken for Little London focusing on two options Decency and Comprehensive Regeneration.	Approved proceeding with the comprehensive regeneration option, delivered through a Private Finance Initiative Contract and approved the Outline Business Case.
<b>November 2006</b>	<b>Little London Housing PFI - Outline Business Case</b>	Outlined progress on the OBC and that approval had been obtained from DCLG.	Progress on the OBC noted and updated affordability position approved. Executive Board reconfirmed its full commitment to the Little London PFI project.
<b>November 2007</b>	<b>Beeston Hill &amp; Holbeck Housing PFI Outline Business Case</b>	To seek approval to submit the Outline Business Case to DCLG for the Beeston Hill & Holbeck Housing PFI scheme and approval to the inclusion of a revised list of sites within the PFI scheme.	Agreed the submission of the Outline Business Case, project outputs and financial modelling. Agreed development sites for inclusion and agreed affordability of joint procurement.
<b>February 2008</b>	<b>Little London and Beeston Hill &amp; Holbeck PFI Projects – Land assembly issues and update on the Lovells Multi-storey Flats</b>	Outlined progress relating to site assembly in order to deliver the Little London and Beeston Hill & Holbeck Housing PFI projects.	Approved use of CPO powers if needed, delegated powers to the Director of Environment & Neighbourhoods to amend site boundaries as necessary and make an application for Decency funding for the Lovells multi storey flats.

## Appendix A – Little London, Beeston Hill & Holbeck Executive Board reporting summary

<b>Meeting</b>	<b>Report Title</b>	<b>Purpose of Report</b>	<b>Decisions</b>
<b>March 2009</b>	<b>Little London and Beeston Hill &amp; Holbeck Round 5 PFI Housing Project – Impact of Wider Economic Changes on Project Scope</b>	Updated on the procurement process and reported that bids received by the three Consortia showed that the wider economic and housing market changes had had a significant impact on the non- PFI elements of the proposed scheme.	Approved scope changes. Noted the opportunity to consider land removed from the PFI project scope at this stage for alternative residential development. Noted the revised timetable for the ISRS and Final Tender stages of procurement.
<b>December 2009</b>	<b>Little London and Beeston Hill &amp; Holbeck PFI Project – Demolition of empty properties prior to start of PFI contract.</b>	To seek authority to spend, and an injection into the Capital Programme of £1.7 m to demolish residential properties in Little London and Beeston Hill & Holbeck	Approved demolition and capital injection of £1.7million.
<b>March 2011</b>	<b>Little London and Beeston Hill &amp; Holbeck PFI Housing Project – Final Business Case and Contract Award</b>	Updated on submission of the Pre Preferred Bidder Final Business Case (PPB FBC) to Government in October 2010. Noted that Government approval was still pending and that a wider VFM assessment was underway. A proposed Preferred Bidder had been selected with details to be released once Government Approval was obtained for the PPB FBC.	Final scope agreed. Approved submission of the Pre-Financial Close Final Business Case(PFC FBC) to the HCA and CLG and authorised the Director of Environment and Neighbourhoods to approve any necessary amendments. Noted and agreed the financial implications for the City Council. Agreed that the Preferred Bidder be formally announced and appointed following HCA/CLG approval of the PPB FBC. Delegated various approvals to the Director of Environment & Neighbourhoods with the Project remaining within the maximum affordability ceiling approved by Executive Board.
<b>June 2011</b>	<b>Little London and Beeston Hill &amp; Holbeck PFI Housing Project – Value for Money (VFM) review and Final Business Case update</b>	Informed Executive Board of progress prior to final consideration of the contract terms and affordability position in July 2011 and update Executive Board about the project status in relation to CLG's value for money assessment of the national housing PFI programme, and the remaining approval processes and likely timetable.	Noted outcome of the Government's VFM review and impact on the programme. Agreed to receive a further more detailed report at the next meeting.

## Appendix A – Little London, Beeston Hill & Holbeck Executive Board reporting summary

Meeting	Report Title	Purpose of Report	Decisions
July 2011	<b>Little London and Beeston Hill &amp; Holbeck PFI Housing Project – Confirmation of amended project scope and affordability</b>	Report outlined the impact of the Comprehensive Spending Review 2010 on the project and the requirement for amendments to the project scope and a resubmission of the Pre Preferred Bidder Final Business Case.	Noted the detailed outcome of the government value for money review. Noted overall changes and cost variations to the project. Noted the re-submission of an amended Pre-Preferred Bidder Final Business Case under the Director Delegation. Noted the revised overall affordability position.
March 2012	<b>Little London, Beeston Hill &amp; Holbeck – Pre Financial Close Final Business Case and Section 27 Delegation Request.</b>	Updated that Government approval for the PPB FBC was not received until 18 <sup>th</sup> October 2011 and that the Preferred Bidder was confirmed on 27 <sup>th</sup> January 2012, with a revised timetable to Financial Close.	Noted the intention to let the contract by end of March 2012. Financial and affordability position noted.
July 2012	<b>Little London, Beeston Hill &amp; Holbeck: Housing PFI Updated Affordability Position</b>	Detailed the shortfall in senior debt funding, with one of the three banks unable to continue to support the project. Members asked to approve revised affordability position and to re-profile the Council's contribution.	Noted the intention to let the contract by the end of July 2012, or as soon as possible after that, to allow a start on site by November 2012. Agreed to re-profile the Council's affordability contribution to the project and that the Director of Environment and Neighbourhoods be authorised to approve the final profiling of the contributions. Approved the updated financial implications and affordability parameters

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