

Council Housing Growth Programme: Approval to procure an alternative contractor to deliver an Extra Care housing scheme at Middlecross, Armley via the SCAPE Procurement Framework

Date: 25th January 2024

Report of: Council Housing Growth Team

Report to: Chief Officer Asset Management & Regeneration

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

Executive Board approved the inclusion of the Middlecross, Armley site as part of the council housing growth programme to deliver extra care housing for older people requiring care and support. The Council has been working with Equans, who were awarded an NEC4 PSC contract in October 2021 to develop the Middlecross Extra Care Scheme and secured planning approval for the scheme in April 2023.

However in November 2023 the Council were informed that Equans senior corporate structure had taken the commercial decision to withdraw from any uncommitted new build schemes as a result of commercial issues, and that they would formally withdraw from the project at the completion of the RIBA 4 design phase, despite the project being viable and close to construction start.

Having reviewed options for progressing the scheme, approval is now being sought to engage with Morgan Sindall Construction Ltd via the Scape framework to complete due diligence on the existing scheme and to explore whether it can then be taken forward through an NEC4 Professional Services Contract prior to approval of a full NEC4 engineering contract for completion of the scheme.

Recommendations

The Chief Officer Asset Management & Regeneration is recommended to:

- a) Approve issuing an appointment letter and entering into a due diligence review with Morgan Sindall Construction Limited under the SCAPE procurement framework; and
- b) Note that subject to a successful review of the project, a request to enter into a contract to deliver services of Pre-construction, Design and other Professional Services to complete RIBA 4 via the SCAPE framework for the Middlecross project will follow subject to a separate report; and
- c) Approve a contingency budget to enable any surveys or other necessary costs to be met as part of the initial due diligence review as detailed in confidential appendix A.

What is this report about?

- 1 There is a need to develop good quality, sustainable, affordable housing across the city and the Council Housing Growth Programme is contributing to the Leeds Affordable Housing Growth Partnership Action Plan 2022-25 which sets out an affordable housing pipeline.
- 2 After a robust competitive dialogue procurement process the council entered into a NEC4 PSC with Engie (now Equans) for Scheme 2 Middlecross, of the Extra Care Package 2 Project, on 18th November 2021. Committing the Council to the expenditure detailed in the contract, subject to a specification compliant scheme being developed by the Contractor.
- 3 On the 10th June 2021 it was agreed to award an NEC4 PSC to Engie, who later rebranded to Equans, follow a competitive dialogue process and a subsequent decision was agreed on the 21st October 2021 detailing the total amount of the NEC4 PSC as this was excluded from the earlier decision.
- 4 A planning application was validated on the 23rd December 2022 and following a coordinated effort the proposal was subsequently approved on the 28th April 2023. This is viewed as a huge success for the project team as this has removed some risks associated with a scheme not having planning approval. The scheme proposal remains a three-story development that includes 53 x 1B 2P and 12 x 2B 3P dwellings with associated communal facilities including care facilities, commercial kitchen and c50 seat dining area.
- 5 In June 2023 the Affordable Housing Delivery Board approved the Gateway Three Submission and agreed that the project could proceed within Gateway Four and commence legal discussions regarding entering into a formal NEC4 ECC with Equans. However, in November 2023 Equans advised it would be withdrawing from uncommitted construction projects.
- 6 As a result, the project team has worked to identify an alternative delivery partner in order to maintain momentum for the project and the programme overall and this report is now seeking approval to progress the Middlecross council housing growth project through the SCAPE procurement framework to achieve its objectives and move the scheme towards readiness for construction commencing in the 2024/25 financial year.
- 7 At this stage, it is only proposed to commit to an 8-week due diligence process with Morgan Sindall Construction Limited, to enable them to assess and confirm that they are able to take the scheme forward and to agree the scope of services and costs needed to take the scheme forward to a later contract award stage, should this be acceptable to the Council. Morgan Sindall will use the due diligence period to undertake an initial review of the current designs and construction information before submitting a costed activity schedule to undertake any design alteration and marketing testing ahead of an NEC4 ECC being awarded.
- 8 To progress the scheme efficiently it may also be necessary at a later date to commit to early works agreements or to enter into standard agreements with utility companies which are required to deliver the scheme, subject to Council legal and surveyors' due diligence.

What impact will this proposal have?

- 9 There are limited opportunities to develop extra care housing in the city, and no other additional sites have been identified for inclusion in the council housing growth programme. The delivery of new affordable housing on this site will contribute to the shortage of affordable extra care housing in the city.
- 10 This proposal will also bring a currently unused brownfield site back into use, providing high quality housing that supports the Council's inclusive growth and climate emergency agendas, together with wider benefit to the community in respect of community engagement akin to this type of development.
- 11 Developing this site via the Council Housing Growth Programme will also enable the Acquisition Programme to acquire properties via its work streams.

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 12 The scheme directly supports all three of the Council's Three Pillars, which are at the centre of the Best City Ambition, through:

- Addressing the challenges of housing quality and affordability, tackling fuel poverty and creating vibrant places where residents have close access to services and amenities;
- Addressing challenges of housing quality and affordability against the trends of rising housing costs and the concentration of older, poor-quality, housing in low income communities; and
- Supporting progress towards our ambitious net zero carbon target, focusing on: improving energy efficiency so that in 2030, Leeds will have made rapid progress towards carbon neutrality, reducing impact on the planet.

The scheme will support the Council’s Best City Ambition through the provision of high quality, affordable, energy efficient housing, which also supports the health and wellbeing of individuals, families and communities in the Pudsey Ward and across the city, as well as supporting tenants at risk of fuel poverty.

Development of the scheme will involve a Team Leads approach, with a focus on: working in partnership; sharing ideas and learnings and being ambitious about the environmental impact.

The scheme will also directly contribute to the achievement of a number of key performance indicators the Council will use to measure success including:

- a) Growth in new homes in Leeds
- b) Number of affordable homes delivered; and
- c) Improved energy and thermal efficiency performance of homes

- 13 All dwellings will be highly energy and thermally efficient contributing to other aspirations and objectives relating to climate emergency, sustainability and fuel poverty. Further work is being undertaken to determine which low carbon solution is the most suitable, the assessment of this will be a balance of capital investment costs, running costs for the resident and overall carbon impact.

What consultation and engagement has taken place?

Wards affected: **Armley Ward**

Have ward members been consulted? Yes No

- 14 Local Ward Members have been consulted and are supportive of the proposals to deliver extra care housing on this site. Ward Members are keen to ensure that homes are developed in line with the Council’s sustainability ambitions in terms of carbon output and fuel poverty.
- 15 The Executive Member for Housing has also been consulted on the proposals to deliver affordable housing on this site and is keen to see the development progress.
- 16 Throughout the initial stages of this project there has been ongoing consultation with Procurement and Legal colleagues within Procurement & Commercial Services. More details of the input and involvement of the Procurement & Commercial Services team is set out in the Legal considerations section of this report.
- 17 The use of the SCAPE framework has previously been approved by PACS, as an alternative to the Yorbuild Framework, subject to consideration of the project requirements. The recently completed extra care housing scheme at Gascoigne House, Middleton was delivered through the SCAPE framework previously.

What are the resource implications?

- 18 The Housing Growth Capital Programme totals £324m and Housing Finance colleagues have confirmed that sufficient funding has been allocated to meet the costs of delivering the scheme. Any scheme will be required to meet viability requirements, whereby the estimated rental income is sufficient to repay the borrowing costs over a 40-year period. The current market rental values within the area would suggest that this likely to be achieved. Any borrowing requirement is assessed at a council level

rather than at a project level. As such the interest and loan repayment for this scheme will be calculated using the prudential borrowing model.

- 19 Morgan Sindall has confirmed that it has suitable resource and capacity, subject to approval of this proposal, to undertake an initial review of design and cost of the scheme.. On receipt of a satisfactory design and cost submission it is at this point a separate decision will be sought to enter into any NEC4 PSC, NEC4 Short Contract, or NEC4 ECC contracts.
- 20 Appropriate and sufficient resources have been identified within the Council Housing Growth Team to deliver this project.
- 21 The future decision report will also consider the requirements and appointment of consultant for the technical advisor role, and the roles required to undertake the Project Management function of the NEC4 ECC.

What are the key risks and how are they being managed?

- 22 A key objective of the preconstruction period is to better understand the site, including any risks that it presents. The mitigation and allocation of these risks will be managed and considered during the pre-construction process. The project is most likely to be delivered via an NEC contract, which requires Client risks to be set out within the contract and any other residual items being transferred to the contractor. As part of the approval to award the build contract, the report will set out for consideration any risks which are proposed to remain with the Authority as well as the costs associated with transferring the remaining risks to the Contractor.
- 23 The change of contractor presents some risk to the project at a key stage, but it is probable given the advanced stage of the project that a number of the key consultants/sub-contractors will be retained due to their design knowledge and liabilities and to avoid revisiting the project which has already secured planning approval. The Council is continuing to work with Equans and our technical advisers to clarify and confirm that all remaining activities agreed and contractually defined in our contract with them are fulfilled including design elements to RIBA 4. This will help support the due diligence process proposed by Morgan Sindall before the council is asked to commit to any further work needed to take the scheme into construction stage.
- 24 The project team recognises that the current market for residential development has experienced significant levels of inflation due to wider issues and continued demand within the sector. The current predictions are that these inflationary pressures will begin to stabilise and then result in a readjustment of prices. The proposed approach for this project therefore enables the Council to take a view about value for money at a later stage.
- 25 The project team and our consultants will work with Morgan Sindall to ensure that a cost-effective budget can be developed for the scheme and to monitor the cost movements in the market. At the same time, the Council is working with partners delivering similar schemes across the region to benchmark costs so that a rounded view can be taken about the scheme before any decision is made at the contract award stage.
- 26 As a result of lessons learned from previous projects, where scheme costs and programme have been impacted due to the delay in utilities being on site resulting from lengthy lead in times. Therefore, future discussions will also include provision for orders to be placed with statutory authorities. This will enable formal engagement with these providers in advance of the build contract, thus ensuring that the onsite programme can be achieved. There is sufficient lead in with these providers to withdraw any orders should the build contract not be progressed. It is understood that any monies paid for works that do not come into fruition with these providers will be refunded.

What are the legal implications?

- 27 The key decision to approve the Middlecross site into the council housing growth programme was taken by Executive Board in July 2017. The recommendations set out in this report are a direct consequence of this Key Decision and therefore, this proposal has been identified as a Significant Operational Decision, due to the change of delivery approach, which is not subject to call in.

- 28 The use of the SCAPE framework has been approved by the Procurement and Commercial Services legal team. The procurement process has been conducted in line with the Council's Contract Procedure Rules. The SCAPE4 framework was approved spring 2019. This framework has recently been reproced by SCAPE5 and colleagues in Procurement & Commercial Services have reviewed the revised terms and approval to use SCAPE5 was granted in July 2022.
- 29 The new framework focuses on sustainability and regeneration, and as such includes a lifecycle agreement. This ensures that performance in relation to sustainability is monitored for five years post contract. The revised framework also offers more clarity, flexibility and client input on risk and KPI's and continues the focus on social value and training and employment opportunities. All works contracts are now also to be delivered under NEC4.
- 30 Morgan Sindall Construction was successfully appointed following a competitive procurement exercise to the fifth generation of the SCAPE framework in August 2021 with approval of schemes with a value range between £7.5 to £75 million on Lot 3. The Council has worked successfully with Morgan Sindall Construction previously under the Extra Care Package 1. It should however be noted that Extra Care Package 1 the developer (Lovell Later Living) and Home Group were responsible for appointing and managing Morgan Sindall Construction.
- 31 There is a requirement to confirm to officers in both Legal Services and Land & Property, the extent of any ancillary agreements which are essential to deliver the scheme (for example utility section agreements and wayleaves) and which will require approval, so that Legal can plan resources effectively. The full detail will be confirmed in the next stage once formal quotes have been received, and a further administrative decision to proceed will be taken by the Head of Council Housing Growth in consultation with the Chief Officer Asset Management & Regeneration.
- 32 The information contained in Appendix A attached to this report relates to the financial or business affairs of particular persons, or organisations, and of the Council. This information is not publicly available from the statutory registers of information kept in respect of certain companies and charities. It is considered that since this information was obtained through one-to-one negotiations between parties, it is not in the public interest to disclose this information now. Also, it is considered that the release of such information would or would be likely to prejudice the Council's commercial interests in relation to other similar transactions in that prospective parties involved in other similar transactions could use this information to influence the level of consideration which may prove acceptable to the Council. It is therefore considered that this element of the report should be treated as exempt under Rule 10.4.3 of the Access to Information Procedure Rules.

Options, timescales and measuring success

What other options were considered?

- 33 Following the notification of Equans proposed withdrawal from the project, the project team has worked closely with colleagues in the Procurement and Commercial Services Team to review possible options for delivery noting the need to maintain momentum and pace for the benefit of the programme, and to ensure that the scheme could still start construction works on site before the end of March 2025, in order to secure external funding to support the scheme and to enable the Council to commit funding through Right to Buy Receipts for both this project and a significant number of acquisitions from its buyback programme, which is directly linked to the number of new build starts in any financial year.
- 34 Having considered options to take the scheme forward, including as outlined under Contracts Procedure Rule 3.1.6 to utilise the YORHub suite of frameworks, given the advanced stage of the scheme and readiness for delivery and the varying timescales involved with each, the proposal is for the Council to utilise the SCAPE procurement framework to engage a new contractor to deliver the project and achieve the current projected target of a start on site during the 2024/25 financial year.
- 35 As part of the options appraisal, the Procurement team including Commercial and Legal services confirmed that the Council has no obligation to offer the scheme to the other bidders that took part in the original competitive dialogue process for the project.
- 36 Other possible options included a Direct call-off or two stage tendering exercise via the Yorbuild Framework but neither of these could guarantee that the scheme could be re-tendered and progressed on time or that a suitably experienced contractor would be selected as a result of the process.

37 The preferred option was therefore identified via the SCAPE Framework which included contractors with suitable experience and a shorter competition process to secure a contractor. To ensure value for money a comparison of preliminary rates and Over Heads and Profits were undertaken of possible contractors on the SCAPE framework and the analysis demonstrated that Morgan Sindall Construction were more competitively priced compared to others on SCAPE.

How will success be measured?

38 Success will be measured by the number of new homes of the right type that are delivered on the site.

What is the timetable and who will be responsible for implementation?

39 The site has been cleared and the demolition of the former Middlecross Care Home has been completed. It is intended that the pre-construction period will formally commence in March 2024 after Morgan Sindall has had their initial eight weeks to review all the current information and review the current design team. It is then anticipated that the NEC4 ECC will be awarded in late summer and the construction period starting in before the end of 2024. The Construction period is likely to be around 20 months.

Appendices

- Appendix A – Comparison of Contractors on the SCAPE Framework (Confidential)

Background papers

None.

Related reports

- July 2017 Executive Board Report - CHG Programme Inclusion of Extra Care Sites - [Executive Board Report and Papers - Monday 17th July 2017](#)
- June 2021 Significant Operational Decision - [Decision Details - Procurement of a Design and Build Contract to deliver new build Extra Care and general needs housing schemes at Cartmell Drive South, Temple Newsam and Middlecross, Armley – evaluation outcome and contract award](#)
- October 2021 Significant Operational Decision - [Decision Details - Award of the design and build contract to deliver new build extra care and general needs housing schemes at Cartmell Drive South and Middlecross](#)
- September 2022 Executive Board Report – Rent Setting – [Executive Board Report and Papers – Wednesday 21st September 2022](#)