

Date:	Monday 9 th January 2017
Classification:	General Release
Title:	Luxborough Street Development
Report of:	Tristan Samuels - Head of Development
Cabinet Member Portfolio	Cllr Mitchell - Cabinet Member for Finance and Corporate Services
Wards Involved:	Marylebone High Street
Policy Context:	City for Choice
Report Author and Contact Details:	Dominic Wilde x1363 dwilde@westminster.gov.uk

1. Executive Summary

- 1.1. The Property and Projects team have been asked to provide a report on the events which led to the Council's decision to withdraw from proceeding with the development of the new Marylebone Library at Luxborough Street.
- 1.2. This report will focus primarily on the questions as raised by Policy & Scrutiny members.
- 1.3. The procurement of a development partner was terminated in September 2014 when Mace, the Council's preferred bidder to deliver the library project, withdrew their tender. Mace stated at the time that they were unable to meet the terms on which they had tendered the project, thus forcing the Council to declare their bid as non-compliant.
- 1.4. The Council at the time of Mace's withdrawal did consider the under-bidders initially. However the Council quickly agreed that due to changes in market conditions and the terms of the bids received, the under-bidders would have had similar difficulties complying with their bids. The project team, working with officers from procurement and lead members decided to progress with the project and to re-procure the project, this time, as a Design and Build (D&B) contract with Development Manager (DM) services.
- 1.5. In April 2015, following the second procurement for the D&B contractor, Mace was selected as preferred bidder.

- 1.6. In October 2015, Mace notified the Council of an unsubstantiated increase in the cost of the project of circa 23%. Despite detailed discussions to understand the cause and resolve this increase which included value engineering options to reduce elements of cost, Mace finally confirmed that they were unable to deliver the scheme within the commercial terms agreed at tender, thus making the scheme unviable.
- 1.7. Mace withdrew their tender and provided the council with the designs developed to date in July 2016.

Question 1) The purpose of the project?

- 1.8. The permanent library in Marylebone was previously located at Westminster Council House (Old Marylebone Town Hall), 97-113 Marylebone Road whose premises were part of the long lease disposal to London Business School. In July 2012, Cabinet reviewed locations for the new Marylebone Library, before deciding that the site at Luxborough Street was the preferred option.
- 1.9. In late 2012 CityWest Homes (CWH) was appointed as project manager to deliver the library project on behalf of the Council and the brief was for a new reference library and residential accommodation for private sale to cross fund the development.

Question 2) What the project is?

- 1.10. Planning permission was granted in March 2014 for 1,700m² of library space and nine residential units for private sale. This site was appropriated for planning purposes through S.122 of the Local Government Act 1972. This appropriation made powers available to the council under S.237 of the Town & Country Planning Act 1990.
- 1.11. The library facility was to be provided on the lower floors and was designed to deliver a separate children's library (including an activity zone), a lending area, meeting rooms, a dedicated study area and IT facilities. The first to the fifth floors comprised of residential apartments with a separate entrance and no on-site car parking. Please see Appendix A for the site location, site photographs and a CGI image of the scheme.
- 1.12. The Council submitted an additional planning application for improvements to the adjoining gardens demised to the residents of Luxborough Tower. This was to be provided to residents as a compensation for the loss of the use of their private amenity play space which formed the new library site.

Question 3) Project costs (original scheduled, actual and abortive)

a) An item by item schedule of the abortive costs involved:

- 1.13. From a total development budget of £16.8m (Cabinet Member decision, 19th May 2015), the project has incurred spend to date on delivering the new Marylebone Library of £1.387m. The majority of these costs have been incurred on professional fees, design work, development management costs and expenditure on the Pre Services Contract Agreement (PCSA).
- 1.14. A breakdown of these costs is located in Appendix B.

b) An explanation as to which costs are judged to be applicable to a future unspecified redevelopment scheme on the site?

- 1.15. Much of the works carried out will be re-used as part of any new development proposed. This is because the majority of this work carried out at the time the development ceased, related to the development of bulk massing and external design of the overall building and did not focus on detailed design stages. It's also of note that it is highly likely that the residential element of the design could be part of a future project and that the amount of work attributable solely to the library use at this site was small by comparison.
- 1.16. In agreement with the finance team and on this basis (see Appendix B), it is estimated that £832k of the expenditure to date would not be written off to revenue and could be re-used, subject to the Council's auditors agreement. Thus £555k is proposed to be written off to Council revenue as an abortive project cost.

c) An evaluation of whether the costs involved in digging a basement on this site for whatever use envisaged is considered a good use of public money?

- 1.17. When the planning application was submitted in August 2013, the Council's library requirements needed to be reflected in the scheme. To ensure viability, there needed to be a proportionate residential element of the scheme which was arranged most effectively and at the scale needed across the first to fifth floors. The site constraints including daylight and sunlight aspects which restricted the height of the development meant the space available for the library requirements necessitated a proposed excavation to create enough developable area.
- 1.18. The planning consent for the Luxborough Street site was delivered in a different financial climate and local requirements regarding what to provide in a library have since changed. The ongoing study of options for the site will determine whether excavation of a basement will be appropriate in the context of a new development.

d) An explanation as to why the project was not re-evaluated when the first contractor pulled out?

- 1.19. After the first procurement process failed, the Council's Gate 1 Panel met in September 2014 and recommended a change in delivery from the previous provision of a developer led project, to a Council led D&B contract.
- 1.20. As part of the Gate review process, before a recommendation to progress with the D&B procurement was made, the build costs, as produced by the developers in the first procurement and the risks of self-development were considered against the benefits, of delivering the new library as quickly as possible, in line with the Cabinet's request.
- 1.21. The design and build contract price received from Mace, fell within the Councils pre-agreed budget for the project and on that price officers' felt that they could demonstrate the project represented value for money. The tender was reviewed by the Gate Panel and on the basis that it was a robust price and it ensured the scheme was viable and deliverable the Gate panel recommended that the Cabinet Member should proceed and award the contract.
- 1.22. Mace was selected as preferred bidder by the Cabinet Member in May 2015.

Question 4) Lessons Learned – both in terms of costs and the process/project management including an outline of Cabinet member updates

- 1.23. Both procurements failed when the Council's preferred partner withdrew after failing to meet the terms and conditions laid out in their submitted and accepted tenders. In both cases the Council followed its governance protocols and while these are necessary, the Council should have acknowledged that the contractor holding its price for only 6 months from submission is not always sufficient.
- 1.24. It is noted that the first procurement started to fail before the 6 month period had expired.
- 1.25. A period of 6 months is a long duration during phases of significant cost inflation. During these procurements these cost rises were at unprecedented levels.
- 1.26. Officers have reviewed these procurements with colleagues from both legal and procurement. In order to overcome these failures in the future the following procedures have now been adopted:-
 - Direction of travel meetings with third parties during the tender process, allows Officers to ensure that any clarifications post tender are minimised, thus saving time.
 - Extensions to the period for which the tender terms are held, which are now considered on a project by project basis. Any cost implications from this facility will be reviewed as part of this process.

- An exclusivity period is being discussed whereby the tenderer would have a set period to enter into a development agreement on the terms tendered.
 - Under the new procurement regulations, a post contract review mechanism will now be conducted for relevant new procurements. This is to ensure that third parties who repeatedly change their tendered position are unable to be considered for future projects until they have been cleared by the Council's procurement team.
- 1.27. Please find beneath an itemised breakdown of relevant Cabinet member updates from 2012.

Table 1 – Schedule of Cabinet & Cabinet Member decisions

Decision By	Title	Decision Date
Cabinet	Future of Council House and Registration Service	11/7/12
Cabinet	Marylebone Library – temporary & permanent relocations	11/7/12
Cabinet Members	Use of Westminster City Council's powers to facilitate the development of land at Luxborough Tower Gardens, Luxborough Street	9/9/14
Cabinet Member	Marylebone Library – Appointment of Developer	19/5/15

If you have any queries about this Report or wish to inspect any of the Background Papers please contact Report Author x1363
dwilde@westminster.gov.uk

APPENDICES:

Appendices

Appendix A – Site location, site photographs and CGI image of scheme

Appendix B – Itemised Luxborough Street development costs

BACKGROUND PAPERS (available on request)

Cabinet & Cabinet Member decisions

Appendix A

Location earmarked by red shaded areas



Photos of former private amenity play space



CGI Image of Scheme



Appendix B *

Cost Type	Costs	% Re-used	Re-used Proportion	Commentary
Site Investigations	£42,081	100%	£42,081	All investigations are transferrable to a new scheme.
Architects	£115,874	65%	£75,318	Amount for RIBA Stages 1-3 (planning) was £75,311. The balance of this total is for RIBA Stage 4 works (detailed design) and unrecoverable
Community Space Architect	£15,000	100%	£15,000	Amount for RIBA Stages 1 - 3 of £15,000 represents planning work
Landscape	£33,299	100%	£33,299	Amount RIBA Stages 1- 3+ represents planning work
Internal Designer	£77,400	0%	£0	Ordered amount is for RIBA Stage 4 library detailed design therefore not recoverable
Building Surveying	£10,460	100%	£10,460	RIBA Stages 1-3 so recoverable
CDM	£1,349	100%	£1,349	CDM advice on RIBA 3 planning designs
Public Consultation / Comms	£8,800	25%	£2,200	This was predominantly linked to the library
QS	£2,575	0%	£0	Independent tender analysis of second tender for library scheme
M&E	£8,200	75%	£6,150	On RIBA Stages 1-3
Party Wall	£2,500	0%	£0	Expired, as expires within 12 months of issue.
Planning	£23,572	80%	£18,858	On overall scheme including residential. Small proportion linked solely to the library
Structural Engineer	£2,000	75%	£1,500	Cost based off Finance cost download
Research (Use)	£12,000	75%	£9,000	Visitor Demand Analysis and Urban Analysis
Project Manager (City West)	£368,351	50%	£184,176	Time spent on RIBA Stages 1-3, RIBA Stage 4 re-useable on Residential element only
Site Hoarding	£7,998	100%	£7,998	Hoarding in situ to keep site secure
Rights of Light paid compensation	£47,000	100%	£47,000	Paid to date. WCC Legal have confirmed RoL claims & compensation could be utilised if a similar building envelope continues going forward

Rights of Light Legal & Surveyor fees	£130,084	100%	£130,084	WCC legal have confirmed legal and surveyor work for both WCC and third parties can be included if building envelope continues going forward
Procurement Legal fees	£19,384	0%	£0	Pinsent Mason and any other legal procurement costs are non-recoverable
Expenses (Planning, Printing)	£2,723	0%	£0	
WCC Salary	£26,435	50%	£13,218	Time spent on RIBA Stages 1-3, RIBA Stage 4 Residential Only
PCSA	£376,324	50%	£188,162	Residential design costs recouped to RIBA Stage 4
Management of BT Asset	£1,990	0%	£0	Previous management cost
Surveyor	£1,640	0%	£0	LSH Surveyor cost
Other Professionals	£93,584	50%	£46,792	Miscellaneous fees some applicable to RIBA Stages 1-3
Total Costs	£1,430,623		£832,644	
Less Miscodings Transferred	-£42,782		0	
Actual Spend (as per Agresso)	£1,387,841			
Re-useable	£832,644			
Write Off to Revenue	£555,197			This includes £22,859 professional costs for temporary library
Variance	£0			

* As agreed with Finance, subject to Auditor's review and on a basis a scheme will proceed on this site.