



City of Westminster **Cabinet Member Report**

Decision Maker:	Cllr Geoff Barraclough, Cabinet Member for Planning and Economic Development
Date:	23 October 2023
Classification:	General release except for Appendix A which is exempt from disclosure as (i) it contains information relating to the financial or business affairs of a particular person (including the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972, (ii) it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under paragraph 5 of Schedule 12A of the Local Government Act 1972; and (iii) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
Title:	470 Harrow Road – Contract Variation and settlement of the main construction contract final account with Roof Limited.
Wards Affected:	Harrow Road
Policy Context:	Fairer Economy
Key Decision:	Yes – the decision is likely to result in significant expenditure or savings and was added to the forthcoming decisions list on 21 August 2023
Financial Summary:	Within the existing approved Capital programme there is a £2.8m 23/24 capital expenditure budget for Stimulating the Economy (STE). This budget allows the service flexibility to provide economic opportunities to local communities. Due to this flexibility, the increase in costs of £280,267.49 associated with the latest contract variation will be absorbed within the overall STE budget.
Report of:	Debbie Jackson, Executive Director – Regeneration, Economy and Planning

1. Executive Summary

- 1.1 This report seeks Cabinet Member approval for a contract variation to settle a contractor's final account in respect of the works delivered under a construction contract awarded to Roof Limited (Reg No. 1269689) in relation to the refurbishment of 470 Harrow Road (the "Project").
- 1.2 The original contract sum awarded by the Council was £1,058,569.81. Variations in respect of additional works agreed amounted to £282,852.21 which increased the contract sum to £1,341,422.02. A further contract variation has since been internally endorsed in the sum of £280,267.49 which brings the final total contract cost and the contractor's final account settlement to £1,621,689.51. As set out in the table below:

<u>Contract Name</u>	<u>Original Total Contract Value</u>	<u>Agreed Contract Variation (December 2021)</u>	<u>Agreed Contract Variation (June/July 2022)</u>	<u>Contract Variation to discharge contractor's Final Account (September 2023)</u>	<u>Final Account (Including Proposed Ext/Variations)</u>
470 Harrow Road – Main Contractor	£1,058,569.81	£127,767 Internally endorsed	£155,085.21 Approved via delegated authority by Executive Director for Regeneration, Economy and Planning and Executive Director for Finance and Resources	£280,267.49 Internally endorsed	£1,621,689.51

2. Recommendation

- 2.1 That the Cabinet Member for Planning and Economic Development approve the contract variation of £280,267.49 required for the Council to settle Roof Limited (Reg No. 1269689) final account submitted for payment. The full contract term is from 29 September 2020 to 15 July 2022, at a total contract value of £1,621,689.51 excluding VAT.

3. Reasons for Decision

- 3.1 The works have now been completed and the contractor's Final Account has been finalised with the contractor. Approval is required for the contractor's Final Account sum so it can be paid by the Council.
- 3.2 A Cabinet Member Decision is required due to the total contract value.

4. Background

The Project

- 4.1 The works undertaken to 470 Harrow Road project (the "Project") were to fit out for lease and then support a Council owned building referred to as 470 Harrow Road for a business start-up training provider who will deliver training and support over extended periods to individuals from all backgrounds who have entrepreneurial aspirations. The operator is the Rebel Business School which has delivered

successful pop-up programmes in the Harrow Road area and across Westminster. This will be its first permanent base.

History – Contract award to final account

- 4.2 A compliant procurement process was conducted to appoint a refurbishment contractor for 470 Harrow Road. The Contract was awarded to Roof Limited which commenced on 29/09/2020 for a period of 8 months with a completion date of 26/05/2021. The original contract value when the contract was awarded was £1,058,569.81.
- 4.3 As the project has progressed, several contract instructions have been issued to Roof which have contributed to the cost increase of the works to be undertaken by an additional amount of £563,119.70. This includes the loss and expense claims submitted by Roof under the contract which have contributed to the cost increase by the sum of £296,543.02.
- 4.4 Key changes which have led to this cost increase include:
- 4.4.1 There have been delivery delays due to significant party wall issues, discovering asbestos, damp proofing works, and issues with getting fire safety assessment being signed off following the changes in insurance legislation in the field.
- 4.4.2 There have also been delivery delays due to availability of key materials and Covid-19 implications (isolation of key staff on site).
- 4.4.3 Further delays were also caused because the entire building had to be underpinned with new steel, chimney stacks having to be removed or underpinned to provide support as well as having to re-secure the entire façade to the building to stop it collapsing into the road. These were not foreseen issues from any pre-existing surveys or condition information. There was also one key issue in relation to a key firestopping element. A fire consultant had to be engaged to redesign and then sign off their design.
- 4.5 There have been interim approvals to allow the project to progress and reach completion.
- 4.6 In December 2021, an approval for a contract extension was internally endorsed until 31 March 2022, with a variation for an increased contract sum of £127,767. This increased the total contract cost to £1,186,335.81. Following the endorsement to approve the contract variation, it had transpired that there were further works and delay to the refurbishment works and so the contract variation endorsed was not implemented and this contract variation did not take effect.
- 4.7 Due to the further additional works that had been required, impacting on timelines for delivery of the project, supplier capability and further increases in cost, there was a further variation for the sum of £155,085.21 under the contract. This was agreed through a PO exemption approved by the Executive Director for Growth and Planning as well as the Executive Director for Finance and Resources.
- 4.8 The Project achieved practical completion on 15/07/2022. Thereafter, there was a period of negotiations between the Council's appointed Contract Administrators and the contractor to agree the last extension of time required to complete the works. This was followed by further protracted negotiations between the Council's appointed cost consultants and the contractor to agree upon the final account for the completed works. The design team have valued the account thoroughly and fairly at every step along the way. There were a high number of meetings with Roof throughout the

project to agree variations as the project proceeded. Roof were then given the full six months of the contract to provide any documentation to support their final account application. Each item was thoroughly assessed by the design team, and Roof were given reasons for assessments of each item, including full cost breakdown for variations where applicable, along with assessments of their loss and expense claims.

- 4.9 Officers rely on robust construction cost management services provided by external cost consultants, to monitor the cost of instructions and changes to the final figure. In this case, the figures presented by the contractor and design team were vastly different and we had to try and achieve some sort of agreement before the actual cost could be reported. The initial Final Account submitted by the contractor was £1,866,412.65 which was negotiated and agreed at £1,621,689.51.
- 4.10 The contract final account has now been settled at £1,621,689.51. The total contract variation sum will be £563,119.70, which will be agreed with the Contractor by the Deed of Variation.
- 4.11 There are a few lessons learned from this project to best ensure we avoid significant contract cost variations; one of them is to carry out more surveys and assessments of the existing building structure prior to going out to tender so we can have a better understanding and allowance of the costs we could incur. Another key lesson is to agree the party wall awards with the neighbouring properties prior to starting construction on site, this is intended to mitigate non-productive preliminary costs and to avoid the need for contractor to work out of sequence, and to carry out the project efficiently.

5. Financial Implications

Current financial position

- 5.1 The table below provides a summary of the financial position surrounding this contract.

Description	£
Contract Final Account	1,621,689.51
Amount paid to 05.10.2023	1,381,050.78
Final payment due to Roof Ltd	240,638.73

- 5.2 Following the final account settlement agreement of £1,621,689.51, a final payment of £240,638.73 to Roof Ltd will now be incurred.
- 5.3 The overall 23/24 Stimulating the Economy budget stands at £2,800,000. At Q2 23/24 there is a forecasted/committed spend of £2,582,559 which includes £240,639 to settle this account. Therefore, there will be no overspend against the overall budget due to this payment.

Revenue implications

- 5.4 There are no revenue implications associated with the contract variation and in turn the final account payment.

6. Legal Implications

- 6.1 The Council has entered a public works contract dated 29 September 2020 under the terms of a JCT Intermediate Building Contract with Contractor's Design, 2016 Edition (with the Council's amendments) ("the original Contract"), with Roof Limited for the refurbishment of 470 Harrow Road, including the erection of a single-storey rear

extension at ground floor level and a shopfront replacement] at 470 Harrow Road, London W9 3RU (the Project).

- 6.2 The original contract sum awarded by the Council was £1,058,569.81.
- 6.3 A contract variation recommendation was endorsed internally on 13 December 2021 to vary the Contract term to extend the completion date of the works from June 2021 to the end of March 2022. This Contract variation was for an additional Contract sum of £127,767 due to asbestos being discovered in the building and removal time and delay to supply of steelwork needed for the building structure amongst other additional works. It is understood from officers that this approved contract variation was not implemented at the time approved.
- 6.4 Thereafter there was a further additional contract sum of £155,085.21 approved by Executive Director for Growth and Planning as well as the Executive Director for Finance and Resources in respect of works carried out to the Project. As such, the contract sum increased by a further £282,852.21 up to £1,341,422.02.
- 6.5 The recommendation in this report is seeking endorsement for approval of a further additional budget spend of £280,267 to settle the contractor's Final Account submitted to the Council in respect of completion of the works.
- 6.6 Section 4 of the report sets out in detail the reasons for all the additional spend related to the works required to complete the refurbishment works for the Project. It appears that the additional expenditure relates to variations and extensions for numerous reasons that became necessary, which also required officers to vary the scope of works to enable the Project to be completed.
- 6.7 The original contract value and additional variation costs to deliver the works is below the regulated threshold sum of £5,337,937 for a public works contract under the Public Contracts Regulations 2015 (the PCR). As such, the contract variations are not subject to compliance with Part 2 of the PCR.
- 6.8 Approval of the contract variation is being sought from the Cabinet Member, following internal endorsement for approval of the recommendation to the contract variation for the additional budget spend of £280,267 to discharge the contractor's Final Account for works completed. The Final Account contract sum cost being £1,621,689.51 excluding VAT (£1,946,027.41 including VAT).
- 6.9 Legal Services have drafted a Deed of Variation for execution with the Contractor.

7. Carbon Impact

- 7.1 The Council has committed to achieve net zero carbon emissions from operations by 2030 and across the city by 2040.
- 7.2 The scheme aligns with Westminster's City Plan – objective 7 which outlines WCC's commitment to reduce carbon by minimising detrimental impacts from developments.

8. Equalities Implications

- 8.1 As a public sector organisation, the Council has a duty under the Equality Act 2010 and the associated Public Sector Equality Duty (PSED) to ensure that the proposals do not lead to unlawful discrimination (direct and indirect), and that they advance equality of opportunity and foster good relations between those with a protected characteristic and all others.

8.2 The 470 Harrow Road project will contribute to improvements for the Harrow Road area through new enterprise space, new employment opportunities associated with the construction and business support training and activities offered by tenant of the building.

9. Ward Member Consultation

9.1 N/A

If you have any queries about this report, please contact:

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APPENDICES

Appendix A: Agreed Final Account Breakdown – Exempt from publication

For completion by the **Cabinet Member for Planning and Economic Development**

Declaration of Interest

I have no interest to declare in respect of this report

Signed:  Date: 23 October 2023

NAME: **Councillor Geoff Barraclough**

State nature of interest if any

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(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled **470 Harrow Road – Contract Variation and settlement of the main construction contract final account with Roof Limited** and reject any alternative options which are referred to but not recommended.

Signed 

Cabinet Member for Planning and Economic Development

Date ...23 October 2023.....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal & Democratic Services, Chief Operating Officer and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.