



Cabinet Member Report

Decision Makers: Cabinet Member for Communities & Regeneration

Date: 25th November 2021

Classification: Part A - Public

With confidential/exempt appendix in Part B of this report which is exempt from disclosure by virtue of the Local Government Act 1972, Schedule 12A Part 1, paragraph 3 (as amended), in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information)

Title: Infill Programme: The Appointment of a Main Contractor for the Modern Methods of Construction (MMC) sites within the Development Infill programme (Ordnance Mews, Helmsdale House, Melrose and Keith).

Wards Affected: Maida Vale and Abbey Road

Key Decision: Yes

Financial Summary: The paper seeks approval to award 3 separate JCT Intermediate Contracts with the following values:

- Ordnance Mews: £1,746,609
- Helmsdale House: £2,407,819
- Melrose & Keith: £2,722,959

Report of: Debbie Jackson, Executive Director of Growth, Planning and Housing.

1. Executive Summary

- 1.1. As part of the Infill Programme, within the Housing Revenue Account (HRA) Housing and Regeneration Development Portfolio, Westminster City Council (WCC) have procured H A Marks Construction Ltd (H A Marks) via a direct

award following the termination of the construction contracts with the previous contractor to redevelop the three garage sites at;

- Ordnance Mews, NW8 6PF
- Helmsdale House, NW6 5EN
- Melrose & Keith, NW6 5EX

1.2. This paper seeks the approval to appoint H A Marks Construction Ltd under 3 separate JCT Intermediate Contracts (with Contractor's Design Portion).

1.3. The project will deliver 15 affordable residential units (3 at Ordnance Mews, 6 at Helmsdale House and 6 at Melrose & Keith).

2. Recommendations

2.1. The recommendation within this Cabinet Member Report is for the Cabinet Member for Communities & Regeneration to approve the contract award to appoint H A Marks Construction Ltd to undertake the Infill Programme construction works in respect of the following sites for the related contract award values:

- Ordnance Mews: £1,746,609
- Helmsdale House: £2,407,819
- Melrose & Keith: £2,722,959

2.2. That the £0.9m increased development cost of these schemes and the potential increased cost due to the change in heating solution is managed through a reduction in the wider infills programme through scope changes, value engineering or further deferrals in the pipeline schemes.

3. Reasons for the Decision

3.1. As part of the Council's HRA (Housing Revenue Account) Development Programme, the Council has identified a number of small scale infill sites for development. This will enable the attainment of the Council's strategic HRA Asset Strategy objectives of:

- Increasing the supply of affordable housing; optimising value from its assets;
- Increasing the quality of the HRA Portfolio; and
- Ensuring the portfolio meets local housing need.

3.2. The Contract Award Report (Gate 3) was presented to the Commercial Gateway Review Board (CGRB) on 27th July 2021 and on 7th September 2021. CGRB endorsed the recommendation to the Executive Director of Growth, Planning and Housing to recommend to the Cabinet Member for Communities and Regeneration to award the 3 separate contracts under the JCT Intermediate Contract terms and conditions. This endorsement of the

recommendation is for the appointment of H A Marks Construction Ltd (697561) to deliver the sites for RIBA Stages 5 -7.

- 3.3. The CGRB Gate 3 report is attached as Appendix B in Part B of this report.
- 3.4. In order to maintain progress against the current development programme and to deliver the three projects by November 2022, WCC will be required to enter into the 3 separate contracts by the end of November 2021.
- 3.5. The 3 individual contract values form part of the wider infills budget of £68,110,000 that was approved in July 2021.

4. Background

4.1. Project specifics

4.1.1. Construction on the three infill sites has a number of tangible benefits, which are in line with the Council's housing priorities;

- Increasing supply of affordable housing
- Optimising value of HRA assets
- Improving quality of HRA portfolio
- Creating better match between housing need and housing supply

4.1.2. The three sites combined will provide a total of 15 Socially Rented units comprising of the following unit mix:

- Ordnance Mews: 1 x 3b4p and 2 x 2b3p (all units incl. parking) = Total 3 units
- Helmsdale House: 1 x 3b5p, 2 x 2b4p, 1 x 2b3p and 2 x 1b2p (incl. 1 wheelchair accessible unit) = Total 6 units
- Melrose & Keith: 4 x 3b5p, 1 x 2b3p and 1 x 1b2p (incl. 1 wheelchair accessible unit) = Total 6 units

4.2. Project Status & Timeline

4.2.1. On 3rd September 2020, WCC terminated the Design & Build contracts with Lowe Build Ltd to construct 12 apartments and 3 townhouses across three sites.

4.2.2. Following the advice of our external solicitors (Ashfords), the termination cited the contractor's insolvency, but the action was also borne out of longer-term issues regarding quality of workmanship and management.

4.2.3. The development team engaged three contractors (Wates, United Living and H A Marks) to discuss the technical challenges of the specialist structures and their ability to take-on the project. H A Marks was the only contractor keen to deliver the sites and had the most experience of timber-framed structures and SIPs panels. They have also performed

well on other WCC projects (Ebury Meanwhile Use) and have a positive working relationship with the council.

- 4.2.4. H A Marks have established themselves onsite and have carried out surveys and investigations. These surveys and investigations have revealed several structural issues due to the damage caused by the buildings being exposed to the elements by Lowe Build. These issues, along with others, have been identified on a schedule alongside recommendations on the defects. WCC have also procured separate specialist firms, Silvatec & Michael Hadi Associates, to validate the contractor's recommendations as well as provide further remedial measures.
- 4.2.5. With the remedial works now concluded and approved by WCC's civils and structural consultant, MHA, the development and delivery team requested a formal tender return from H A Marks. The final tender return was received on 18-08-2021.
- 4.2.6. In order to de-risk and aid the programme, WCC have instructed H A Marks to carry out a range of early works under Purchase Orders. The costs have been carefully interrogated by the WCC's cost consultants and confirmed as value for money before proceeding and will all form part of the main contract. This has enabled the continuity of works on site whilst the main contract terms and conditions and contract sums have been negotiated with H A Marks.
- 4.2.7. The purchase orders raised to date are incorporated into the contract values noted above.
- 4.2.8. WCC have also procured Gardiner & Theobald across the wider Infills Programme to provide strategic advice with regards to current tender returns and contractor pricing. Gardiner & Theobald have advised that they are content that the H A Marks' tender submissions provides value for money and is in line with current pricing within the market.
- 4.2.9. WCC will be seeking to lodge a claim against Lowe Build Ltd. WCC will seek to recover all losses from Lowe Build Ltd following the settlement of the final account with H A Marks.
- 4.2.10. The following consultants have been appointed to assist in the delivery of the project:
 - Tetra Tech – Contract Administrator and Quantity Surveyor
 - Penwarden Hale – Architect and Principal Designer
 - Michael Hadi Associates – Structural and Civil Engineer
 - Ingleton Wood – Drainage Consultant
 - Baily Garner – Clerk of Works

4.1.2 The key dates for delivery of these projects are as follows;

Task	Ordnance Mews	Helmsdale House	Melrose & Keith
H A Marks Remedial / Enabling Works to assist the programme	October 2020 - May 2021	October 2020 - May 2021	October 2020 - May 2021
H A Marks Tender Bid	18/08/2021	18/08/2021	18/08/2021
Gate 3 CGRB Approval (Contract Award)	07/09/2021	07/09/2021	07/09/2021
Tender and Value for Money Report by Tetra Tech	01/09/2021 (Draft) & 27/09/2021 (Final)	01/09/2021 (Draft) & 27/09/2021 (Final)	01/09/2021 (Draft) & 27/09/2021 (Final)
Present the Cabinet Member Report to the Capital Review Group	15/11/2021	15/11/2021	15/11/2021
Cabinet Member Report Approval	TBC	TBC	TBC
Practical Completion	Autumn 2022	Autumn 2022	Autumn 2022

4.3. Design, Planning and Delivery

4.2.1 The architects responsible for bringing the scheme up to the point of planning submission (RIBA Stage 3) were Metropolitan Workshop. The designs were developed from Stage 1 to 3, with input from WCC and City West Homes (CWH).

4.2.2 Planning approval was granted on 16/01/2018 for Helmsdale House and Melrose & Keith and on 10/04/2018 for Ordnance Mews.

4.2.3 Penwarden Hale have been appointed as the Architect and Principal Designer for the projects and will be the lead designers. They have produced construction stage designs (RIBA 5) along with Michael Hadi Associates which has been reviewed and priced by H A Marks.

4.2.4 H A Marks will take on the design responsibility for the Mechanical, Electrical, Plumbing and timber frame design elements of the projects via a 'contractor's design portion' under the contracts. A set of WCC Employer's Requirements were provided as part of the tender pack to ensure H A Marks is designing in accordance to WCC's requirements.

4.2.5 WCC will be requesting subconsultant and subcontractor collateral warranties from H A Marks.

4.4. Surrounding Residents

- 4.4.1. All three MMC sites are surrounded by a combination of private and WCC residents, including retail units at Ordnance Mews. Many of the residents overlook the sites and have a clear view of current site activity.
- 4.4.2. H A Marks, along with our communications team, have been actively engaging with residents with regards to site progress.
- 4.4.3. H A Marks will have a designated liaison manager during the main works and will communicate with local residents (in relation to specific works) via newsletters and notice boards. The interface between the project and the local community will be managed through the WCC communications team.
- 4.4.4. The works will be strategically sequenced to ensure disruption is minimised to local residents and road users and to efficiently utilise the available site space.

4.5. Security and Health & Safety

- 4.5.1. Consideration has been given with regards to the security and health and safety aspects of the project.
- 4.5.2. H A Marks have installed perimeter hoarding across the 3 sites with designated access points. The three sites are also currently monitored by CCTV via an external security company.
- 4.5.3. A detailed Construction Phase Plan has been produced for each site which describes how the health and safety risks will be identified and managed by H A Marks.
- 4.5.4. H A Marks have established an integrated management system to manage health & safety, quality, and environmental management responsibilities. This system is in place to ensure that all relevant legislation and codes of practices are identified and adhered to and is of a nature that promotes continuous improvement. A copy of this plan will be available on site.
- 4.5.5. Site specific goals and targets have been set per site. RAMS will be used and followed to ensure potential hazards are eliminated.
- 4.5.6. H A Marks will have a designated health and safety manager who will routinely inspect site. The Principal Designer will also be carrying out regular visit to ensure compliance with the CDM 2015 regulations.

4.6. Tender Evaluation - Quality and Commercial Assessment

- 4.6.1. A procurement exercise was conducted via the Crown Commercial Services (CCS) framework agreement (RM6088) Lot 1.1 Building South East Direct Award to appoint with H A Marks Construction (697561).

- 4.6.2. A tender pack was issued to H A Marks Construction and a compliant tender return was received on 18 August 2021. Following a waiver of the procurement code and the approval by Debbie Jackson, the project was tendered and assessed based on an evaluation criterion of 40% quality and 60% price.
- 4.6.3. The qualitative submission incorporated a methodology and delivery statement, programme, delivery and resource schedule and a responsible procurement delivery plan. The submissions were scored and moderated by the development and procurement team. The moderation concluded that H A Marks had submitted a thorough and compliant bid.
- 4.6.4. The commercial submission has been thoroughly assessed by Tetra Tech (Contract Administrators and Quantity Surveyors) and they have advised the contractor's bid demonstrates value for money. The tender report has been attached in Part B, Appendix C of this report.

4.7. H A Marks and Value for Money

- 4.7.1. H A Marks have worked collaboratively with WCC and our consultants throughout the early/enabling works. H A Marks have accepted an open book approach when providing quotations for early works. Where possible, H A Marks have demonstrated they have sought quotes from various suppliers and subcontractors to demonstrate value for money.
- 4.7.2. The recent commercial submission for the main works also adopts an open book approach. A clear build-up to the commercial submission has been provided along with various elemental quotations.
- 4.7.3. H A Marks have also accepted to utilise the Crown Commercial Services Framework rates where applicable. To further demonstrate collaboration and value for money, certain rates applied are lower than the framework rates.
- 4.7.4. The Development Delivery Team have benchmarked the MMC sites against various other infill sites. This suggest the £/m² rates on the MMC sites are comparable to other infill schemes.
- 4.7.5. To further reduce costs and demonstrate value for money, WCC are working with the project team and H A Marks to review potential value engineering opportunities.
- 4.7.6. The Tender Report concludes that the Contract Administrator and Quantity Surveyor is content that the tender submissions offer value for money and that they support the council entering into contracts with H A Marks.

5. Financial Implications

- 5.1. The Budget within the HRA was approved at Cabinet as part of March 2021 HRA submission and includes the infill budget of £68,110,000. Within this infill budget, the following development budget allowances were made per project:

- Ordnance Mews: £2,327,000
- Helmsdale House: £2,870,000
- Melrose & Keith: £3,165,000

5.2. The tender return submitted by H A Marks in August 2021 shows that costs are higher than anticipated and as such, a greater budget will be required. The revised infill budgeted sums required are as follows:

- Ordnance Mews: £2,497,000
- Helmsdale House: £3,151,000
- Melrose & Keith: £3,631,000

This represents an increase of £917,000 from the approved CMR budget and the current budget required. The £917,000 increase has been attributed to the final contract values increase (£760k), additional financing costs (£13k) and a refresh of the contingency on Helmsdale House (£144k).

The £760,000 construction increase has been attributed to the following factors:

- Material & labour price increases.
- Changes to the fireproofing design due to building control input.
- The rebuilding of the retaining wall which was not originally part of the contractor's scope.

5.3. In addition to the above, officers are currently reviewing the heating solutions being fitted across the three sites and exploring options to replace the planned heating arrangements for the three sites with more sustainable solutions.

5.4. The MMC sites sits within the wider infills programme. As a result, it is proposed that the £0.9m additional cost for the scheme as highlighted in para 5.2 above and any additional cost from the change of heating solution is recovered from elsewhere within the Infills Programme through scope changes, value engineering or further deferrals in pipeline schemes.

5.5. The wider infills budget is funded from a combination of the Affordable housing Funds (AHF), Government grants and HRA Borrowing.

5.6. Following the conclusion of the final account with HA Marks, WCC will lodge a formal claim against Lowe Build. We will not know the full extent of what we are likely to recover until the process has formally started.

5.7. Tetra Tech (WCC Quantity Surveyor) has provided assurance that the Contractor's proposed price, once benchmarked, aligns with the current market conditions.

6. Legal Implications

- 6.1. The recommendation in this report is to appoint H A Marks Construction Ltd (“the Contractor”) via the Crown Commercial Services (CCS) Framework Agreement (RM6088) Lot 1.1 Building South East (“the Framework”) and make a direct award of three separate public works contracts in respect of 3 MMC Sites as detailed in the report.
- 6.2. The Framework has been set up in accordance with the Public Contracts Regulations 2015 and the Council is permitted to make call-off contracts by way of a direct award in accordance with the terms of the Framework’s terms and conditions.
- 6.3. Approval for each contract award must be approved by the relevant Cabinet Member following recommendation to approve from the appropriate Executive Leadership Team member with endorsement of the Commercial Gateway Review Board.
- 6.4. It is noted that prior to the proposed contracts being awarded, the Contractor has been engaged and working on the MMC Sites under the Council’s Purchase Orders raised. The works undertaken to date has proceeded in good faith by both parties. Albeit that the current contractual arrangements between the Council and the Contractor are on implied terms by the conduct of each. Subject to the contract awards being approved, entering into the express contract terms with the Contractor will ultimately put the Council in a better place to protect its interest in respect of the work being carried out.
- 6.5. The form of contracts to be entered into with the Contractor shall be the JCT Intermediate Building Contract with Contractor’s Design (ICD) 2016 (with the Council’s standard amendments)
- 6.6. A Performance Bond has been requested from the Contractor as part of the tender exercise to provide further assurance to the Council.

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. The project was originally designed in 2017 and incorporates gas fired boilers.
- 7.2. A feasibility study was undertaken to install ASHP in lieu of gas fired boilers. This study took into account the current construction status of the 3 sites, the programme and cost implications. The feasibility study suggested the anticipated development cost to install ASHP at this stage of the construction programme would cost circa £660k.
- 7.3. Given the programme delays and high costs associated with changing the energy strategy to ASHP, the development team procured a separate specialist M&E consultancy firm, Synergy Building Services, to provide further advice on

what could designed and adopted to these projects to align with the council's commitments.

- 7.4.** By working collaboratively with Synergy Building Services and H A Marks, another option which has been put forward is incorporating electric boilers along with solar powered electric heating in lieu of gas.
- 7.5.** Both the consultant and H A Marks are currently reviewing what effect this will have to the SAP calculations. A review is currently being undertaken to see whether this change to the energy strategy will comply with Part L of the Building Regulations.

8. Consultation

- 8.1.** A Briefing Note was circulated to relevant Ward Members on 19/11/2021. Ward Members were given 7 days to provide any comments they may have; no comments were received.

9. Next Steps

Below is the timetable for the next steps to be taken in awarding this contract and delivering the scope of works on site.

Task	Ordnance Mews	Helmsdale House	Melrose & Keith
H A Marks Remedial / Enabling Works to assist the programme	October 2020 - May 2021	October 2020 - May 2021	October 2020 - May 2021
H A Marks Tender Bid	18/08/2021	18/08/2021	18/08/2021
Gate 3 CGRB Approval (Contract Award)	07/09/2021	07/09/2021	07/09/2021
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Cabinet Member Report Approval	TBC	TBC	TBC
Practical Completion	Autumn 2022	Autumn 2022	Autumn 2022

10. List of Appendices

Part B - Appendix B – Procurement Gate 3 Paper*

Part B - Appendix C – Tender Report*

For completion by the Cabinet Member for Communities and Regeneration

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

State nature of interest if any.....
.....

(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 recommendations in the report entitled **Infill Programme: The Appointment of a Main Contractor for the Modern Methods of Construction (MMC) sites within the Development Infill programme (Ordnance Mews, Helmsdale House, Melrose and Keith)** and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Communities and Regeneration

Date

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 Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (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.

Appendix A – Other Implications

Health & Safety

The main contractor will be required as part of their duties under the construction contract to comply with all relevant legislation including the Construction (Design and Management) Regulations 2015.

Impact on the Environment

The contractor will be required (as a planning condition) to comply with the Westminster City Council Code of Construction Practice. The code sets the Council's requirements in terms of major construction projects and covers areas such as noise, working hours, traffic, pollution etc.

Communications

Tbc detail on comms plan.

Risk Management

Risk	Mitigation
Further delay caused by changes to the heating strategy	<p>The council has committed to achieve net zero carbon emissions from operations by 2030 and across the city by 2040.</p> <p>The project was originally designed in 2017 and incorporates gas boilers.</p> <p>A feasibility study has been undertaken to install ASHP in lieu of gas fired boilers. This study takes into account the current construction status of the 3 sites, the programme and cost implications.</p> <p>The initial development budget suggests a cost of circa £660k (£44k per unit) to install ASHP in lieu of gas fired boilers and an 8-week delay to the delivery programme. This figure incorporates the contractor's cost, the abortive works costs, additional contractor prelims, consultancy fees and WCC internal costs.</p> <p>Given the high costs and delays associated with installing ASHP at this stage, WCC have procured an independent M&E consultancy firm to advise alternatives to the energy strategy to meet the council's carbon objectives.</p> <p>By working collaboratively with the consultant and the contractor, another option which has been put forward is incorporating electric boilers along with solar powered electric heating in lieu of gas. SAP calculations are currently being carried out to assess whether this will meet Part L of the Building Regulations.</p>

	<p>It is clear that the project must not incorporate gas boilers.</p> <p>The delivery team do not want this to delay the council entering into a contract as the contractor's price is fixed until the end of November. The change to the energy strategy will be dealt with via a post contract instruction.</p>
<p>Shortage of materials and manufacturing issues leading to price increases. & lack of continuity on site.</p>	<p>Following a discussion held with the contractor, we have been advised their price is fixed until 30/11/2021.</p> <p>A risk management meeting will be held over the next few weeks in order to identify 'at risk' materials and mitigation measures.</p> <p>The contractor has already been proactive and has procured some materials under purchase orders. The contractor is currently working at risk on site.</p> <p>It is anticipated we will obtain CM approval by the end of November (based on a CRG date of 15/11/2021).</p>
<p>Undiscovered structural design defects</p>	<p>WCC previously appointed Silvatec and Michael Hadi Associates to carry out an independent structural review. Defects highlighted have now been rectified by H A Marks and signed off by the two consultants.</p>
<p>COVID-19 and the risk of the unknowns associated with this.</p>	<p>H A Marks have provided a risk assessment and mitigation controls measures to be put in place. This is covered in detail within their Construction Management Plan.</p>