

**NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL**

**POLICY DEVELOPMENT GROUP – 12 MARCH 2014**

Title of report	<b>CALL-IN OF CABINET DECISION OF 4 MARCH 2014 ENTITLED 'ADDITIONAL COSTS OF THE DECENT HOMES PROGRAMME 2014/15'</b>
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Purpose of report	To provide more information to Policy Development Group on the matters which have been raised through the call-in process.
Council Priorities	Value for Money
<p>Implications:</p> <p>Financial/Staff</p> <p>Link to relevant CAT</p> <p>Risk Management</p> <p>Equalities Impact Assessment</p> <p>Human Rights</p> <p>Transformational Government</p>	<p>The implications of the decision are covered in the report</p> <p>Not applicable</p> <p>The risks associated with the decision are covered in the report</p> <p>The implications of the decision are covered in the report</p> <p>Not applicable</p> <p>Not applicable</p>

Comments of Head of Paid Service	The report is satisfactory
Comments of Section 151 Officer	The report is satisfactory
Comments of Monitoring Officer	On the advice of external solicitors, the report is satisfactory
Consultees	Housing Revenue Account Business Plan Project Board
Background papers	None
Recommendations	<p><b>POLICY DEVELOPMENT GROUP CONSIDERS THE REPORT AND AGREES ONE OF THE FOLLOWING OPTIONS:</b></p> <p><b>A) NO FURTHER ACTION BE TAKEN; OR</b></p> <p><b>B) CABINET SHOULD BE ASKED TO RECONSIDER ITS DECISION IN THE LIGHT OF COMMENTS FROM POLICY DEVELOPMENT GROUP; OR</b></p> <p><b>C) THE REPORT AND COMMENTS OF POLICY DEVELOPMENT GROUP ARE CONSIDERED BY FULL COUNCIL BEFORE REFERRAL BACK TO CABINET.</b></p>

## 1.0 BACKGROUND

- 1.1 Members will be aware that Cabinet considered a report on 3 March 2014 entitled "Additional Costs of the Decent Homes Improvement Programme 2014/15". A copy of the report which was considered by Cabinet is attached as Appendix 1 to this report.
- 1.2 Cabinet resolved at that meeting to approve the recommendations in the report. A copy of the draft minutes is attached as Appendix 2. On 5 March 2014, the Monitoring Officer received notice from a number of Councillors that they wished to call-in the decision of Cabinet for scrutiny.
- 1.3 The Monitoring Officer confirms that the constitutional requirements for call-in of a decision have been met.
- 1.4 The grounds for calling-in the decision are as follows:
- 1 Whether the accepted definition of value for money can reasonably be applied to the allocation of an additional £1.6 million to the 2014/15 Decent Homes Programme of Improvements over and above the draft budget provision, arising from recommendations 1 & 2.

- 2 We want to examine in detail whether this substantial additional allocation satisfies the requirements of proportionality in comparison to the overall budget, the resources available to the Council and to the previous years' outturn within this contract.
- 3 In light of the fact that these additional costs only came to light towards the end of the contract, we feel that additional advice is required from officers as to what controls and monitoring on costs were in place, and whether these were sufficiently robust. Included in this would be consideration as to whether the original aims of the project were clear enough to achieve the desired outcome of completing within budget. We would also wish to question whether any options other than those listed in paragraph 3.6 were considered.
- 4 In addition we would like to consider recommendation 3 in the report, in order to ensure the options proposed and the reasons for this further funding request are sufficiently explained.

This report therefore seeks to address these grounds and also explains the process of call-in to members.

- 1.5 The Director of Services, Head of Housing, and the Repairs and Investment Team Manager will attend the meeting of Policy Development Group to respond to questions from members in relation to the call-in.

## **2.0 CALL – IN GROUND 1**

- 2.1 The first call-in issue is “Whether the accepted definition of value for money can reasonably be applied to the allocation of an additional £1.6 million to the 2014/15 Decent Homes Programme of Improvements over and above the draft budget provision, arising from recommendations 1 & 2.” The following sections of this report will explain how the contractors were chosen to complete this work, how the draft budget was established, and the pricing process that is a condition of the five year Term Partnering Contract (TPC) we have with Kier Services and Lovell Partnerships, who are known as our service providers under the terms of the contract.
- 2.2 When letting the contract to complete the Decent Homes Improvement Programme (DHIP) the decision was taken by Cabinet to commission two contractors for a five year term using a TPC approach. The contract procurement process used an estimated overall contract value over five years of £35 million, which included both the Decent Homes programme (Homes and Communities Agency grant funding and our own resources) and the two subsequent years. The contract value was estimated by using the projected Housing Capital Programme budget as detailed in the Housing Revenue Account (HRA) Business Plan. Use of this figure represented no guarantee of work to this volume for the service providers bidding, but is an illustration of the likely level of work, to allow them to complete a tender submission.
- 2.3 The draft budget for the DHIP and the two subsequent years was established as part of our preparations for the implementation of HRA Reform in 2011/12. This was based on the confirmed contract values obtained at the time of the tender process to select the service providers, and indicative costs of maintaining the housing stock at the Decent Homes standard for the two years after 2014/15. The post 2014/15 costs were estimates,

based on our historic stock condition information from condition surveys completed since 2006, and we anticipated they would be refined once the stock condition scoping surveys for the DHIP programme had been completed in 2014/15. This work is currently being completed by the Planned Investment Team with a view to informing the decision making required to establish the post 2014/15 improvement programmes priorities, which is also due to be considered by Cabinet on 24 June 2014 as part of the proposed report on funding for the newly identified non Decent Homes.

- 2.4 There are multiple variables that can affect the cost of completing a years programme of works, as the programme is driven by the condition of each individual property, and therefore the level of work required to it (as explained in section 1.3 of the Cabinet report).
- 2.5 When determining our approach to commissioning works we considered basing our annual programme cost forecasts on our existing stock condition information. When we submitted our HCA funding bid we held stock condition survey data on approximately 65% of our tenants homes and the condition of the remaining properties had been “cloned”, a recognised asset management technique that allows the condition of properties not surveyed to be assumed from similar ones which have been surveyed. The alternative approach was to complete scoping surveys of all the properties due to be improved in each year of the programme, prior to commissioning the work from the service providers.
- 2.6 It was therefore decided that the risk of placing orders for the completion of Decent Homes Improvements to tenants homes without a confirmed stock condition survey was significant enough to make it worthwhile carrying out surveys of each home before orders were placed. The alternative would have been to ask the contractors to price based on our historic stock condition information, from which they would have to decide whether or not to do their own pricing surveys. This could have introduced significant variations when properties were having work commenced on them, as a result of the service providers finding a different profile of work was required, or, could have lead to unnecessary or incomplete works being undertaken, if the stock condition survey information was incorrect.
- 2.7 Having decided to commission scoping surveys, we initially intended to commission just one large programme for the whole housing stock, however, having considered the cost and logistic issues surrounding this, the preferred approach subsequently became to complete the surveys annually in advance of the programme of works being confirmed to the service providers for the subsequent year. Through this process we were confident that the Councils and the tenants’ interests in terms of delivering the right work to the right properties for the right price could best be promoted, leading to a value for money outcome for all concerned.
- 2.8 For the first two years of the programme, the contractor’s prices were held at the levels quoted in their tenders. The contract contained a provision to allow prices in subsequent years to be varied based upon cost pressures in the market prevailing at the time of the price being submitted.
- 2.9 The £1.65 million additional costs identified as part of the pricing process for the 2014/15 programme represent 4.7% of the estimated total contract value of £35 million over five years. Although a significant amount of money, this is considered to be within the acceptable operating tolerances for a contract of this size and nature.

- 2.10 As explained in section 3.5 of the Cabinet report, the contractors have experienced increases in the cost of labour and materials, which they have reflected in price increases to us. It is also important to note that for some elements of work, prices have been reduced by the service providers from last year's levels.
- 2.11 Another significant factor also explained in section 3.5 of the Cabinet report is that the amount of work required to the properties in the 2014/15 programme differs in profile from that required in the previous two years, in terms of the elements of work required. Whilst the average number of elements of work remains constant at 3.6 per property, the detail within the elements has a greater proportion of higher cost works. This includes -
- § Roofing – as explained in the Cabinet report the number of properties requiring roofing work is higher in 2013/14 than in previous years with an increase from 224 in 2013/14 to 305 in 2014/15, an increase of 81 roofs. The programme also contains a number of slate roofs which are particularly expensive to replace and this has a negative impact on the average cost.
  - § Asbestos Removal – as the types of property in the 2014/15 programme have a higher proportion of properties with asbestos to be removed, we need to ensure there is adequate budget provision to fund this work at the time of commissioning the programme. An alternative would be to leave the asbestos in situ and work around it where possible, but this is not being pursued as it simply defers the challenge of addressing the asbestos to a later date.
  - § Level Access Showers – a very popular element of the improvement programme has been the offer of a Level Access Shower in suitable properties in lieu of a standard bathroom. We have seen the take up rate of this offer reach 90% for the 2012/13 and 2013/14 programme, and it is very popular with tenants. It also has the advantage of future proofing our older persons housing stock to reduce the need for future aids and adaptation requests (which are funded from the Housing Capital programme). The profile of properties within the 2014/15 programme includes 295 potential level access showers compared to just 130 in the 2013/14 programme. For each shower installed there are additional marginal costs, over and above the cost of a standard bathroom, which are not covered by backlog funding, and when preparing our budgets we are taking a prudent view by ensuring we have the financial capacity to meet 100% of the potential costs if all eligible tenants chose to take up this option.
- 2.12 Inflationary pressures also form part of the reason for the costs having increased, as explained in the Cabinet reporting section 3.5. Whilst it is technically possible to fix prices for the full duration of the contract term, this becomes more difficult over longer periods, as the service providers will need to make some provision in their tendered costs to cover for potential increases in labour and materials prices. The TPC we use is based on “open book” principles and therefore any cost increases have to be justified and explained as part of the pricing process. Verification of the costs submitted has been completed, and as a result of the increased activity in the housing market there are genuine cost pressures being experienced by the service providers, as detailed in the Cabinet report. In the event that we act unreasonably in terms of agreeing to justified cost increases, there are risks the contractor may not wish to honour the contract, or will be forced to engage sub contractors prepared to deliver the works to the price available, which can have a negative impact on the quality of work completed, and therefore overall experience for our customers. In fixed price contracts there is also the risk that when submitting their tender,

the service providers may make assumptions about cost increases which do not come to pass. If this is the case, the service provider sees a windfall gain in income, although they have to stand any losses arising from costs increasing by more than the provision they have made in their tender price. To remove this uncertainty, the TPC has a negotiated open book approach to this area.

- 2.13 As previously mentioned in section 2.2, the initial assessment of the value for money provided by our service providers was undertaken at the time the TPC was let. This involved an Official Journal of the European Union (OJEU) compliant advertising, assessment, and subsequent extensive tender evaluation process examining both the cost and quality of bids submitted against a pre agreed set of evaluation criteria. This process included input from a Tenant Representative, and resulted in the final decision to appoint Kier Services and Lovell Partnerships.
- 2.14 Having made the commitment to work with Kier Services and Lovell Partnerships for the five year duration of the contract the various prescribed processes within the industry standard TPC are then used to award works, normally on an annual basis. The TPC form of contract was chosen, having evaluated the various standard forms of contract available, and determined that it represented the most appropriate model to use for the scale and type of work we were looking to procure. It also reflected industry standard best practice following the Egan Report, Rethinking Construction and the earlier Latham Review, all recommending a longer term relationship between client and contractor which were based upon partnering principles with an “open book” approach to costing.
- 2.15 The TPC when let included a clause requiring prices for different elements of work to be fixed for the first two years (2012/13 and 2013/14), with subsequent amendments to be negotiated based on the conditions of the chosen form of contract. Some contracts make allowance for price fluctuations based on reference to indices, such as inflation rates or the Building Cost Index. Although these rates were low at the time the contract was let, it was considered that in the event of an up-turn in the housing market the building cost related indices could see significant shifts which we would then be directly exposed to in terms of cost increases. Inflation rates can also vary significantly, and do not always accurately reflect the additional cost pressures being experienced by service providers in the building industry specifically. We also considered the option of not including any provision for costs to be increased over the life of the contract, and this was rejected, for the reasons described in section 2.12.
- 2.16 Another element of our approach to assessing value for money has been to use the annual analysis of costs produced by the Homes and Communities Agency. The data from this process for 2012/13 is attached as Appendix 3, and updated information for 2013/14 is anticipated to be available shortly. This allows comparison of our costs with similar Decent Homes programmes across the Country. Analysis of the 2012/13 prices indicated excellent value for money had been obtained, with our costs being below many other Councils and Arms Length Management Organisations’ within the programme.
- 2.17 The information given in section 2 of this report, is presented to the Policy Development Committee to give reassurance that the price increases identified for the 2014/15 DHIP programme have legitimately arisen due to known factors, and in incurring these extra costs, the Council is continuing to deliver a programme of works which represents value for money.

### **3.0 CALL – IN GROUND 2**

- 3.1 The second call in issue is “We want to examine in detail whether this substantial additional allocation satisfies the requirements of proportionality in comparison to the overall budget, the resources available to the Council and to the previous year’s outturn within this contract.” The following sections of this report will examine the outturn for previous years of the Decent Homes Improvement Programme, and illustrate the scale of the additional budget request being made against the total resources deployed in managing, maintaining and improving the Councils housing stock to address the point relating to proportionality.
- 3.2 The total five year projected costs for the works to be completed by the service providers under the term of the contract was estimated to be £35m. The request for additional funding of £1.65m therefore represents 4.7% of the total contract sum, which is considered to be within typical tolerances for a contract with this level of complexity.
- 3.3 In terms of the additional funding request as a proportion of the total HRA annual budget, the approved revenue budget for 2014/15 (as revised) includes estimated income of £17,152,970 and shows a projected end of year operating surplus on the account of £484,812. The Housing Capital Programme (as revised) indicates expenditure of £16,326,725 in 2014/15.
- 3.4 In terms of comparing the previous year’s budget outturns within the contract, the only complete year available for the DHIP programme is 2012/13 as we have not yet concluded 2013/14. The 2012/13 programme was delivered within the available budget figure, and there was some slippage due to some properties from 2012/13 being completed in 2013/14. The 2012/13 Housing Capital Programme budget for DHIP works was £4.1 million, with the confirmed expenditure in year being £3.515 million. Ongoing monitoring of the 2013/14 budget spend indicates that the current budget provision is projected to be adequate.
- 3.5 Whilst an additional funding requirement for £1.65 million does represent a significant additional cost to the Council, the reasons for this increase have been tested and are considered to be robust. Financial provision to meet the increase was able to be identified from existing reserves and windfall capital income with no direct impact on service delivery.

### **4.0 CALL – IN GROUND 3**

- 4.1 The third call in issue is “In light of the fact that these additional costs only came to light towards the end of the contract, we feel that additional advice is required from officers as to what controls and monitoring on costs were in place, and whether these were sufficiently robust. Included in this would be consideration as to whether the original aims of the project were clear enough to achieve the desired outcome of completing within budget. We would also wish to question whether any options other than those listed in paragraph 3.6 were considered”. The subsequent sections of this report will address the issues raised here by explaining the cost control and budget monitoring arrangements in place in relation to this contract, and explain the original aims of the project to clarify that the additional budget is required to deliver the level of improvements.

- 4.2 There are a series of cost control measures in place relating to the Decent Homes Improvement Programme. Within the requirements of our TPC environment the process of commissioning an annual programme of works commences with the issuing of a Term Brief by the client, which specifies the work expected to be required (broken down into 17 elements) and the addresses of each property in the programme. In response to this Term Brief the service providers submit a Task Price, which details their anticipated costs, based on the details in the clients Term Brief. The Task Price details the anticipated properties where work is to be carried out, and the nature of the work at each address. The work required is broken down into the same 17 different elements for each address with an average price quoted for each element by the service providers in their submission to us. This element of the total price is known as the “measured works” element, as it depends upon the volumes of work completed. In addition to this, the service providers also have an element of cost known as “preliminaries” which are their fixed costs for undertaking the programme of works. The combination of the “measured term” element and the “preliminaries” makes up the total Term Price for the works for that year. The prices submitted in the Task Price by the service providers are then considered and evaluated by the client. This includes an open book principle assessment of the reasons for any increases or decreases in costs for certain elements of work. If the client is satisfied that the Term Price is acceptable, it is confirmed as a Task Order and the Service Providers can then commence delivery of the programme of works.
- 4.3 The process of cost control once the Task Order has been issued to the Service Providers is an ongoing one throughout the contract period. It is based around a monthly invoicing process whereby throughout each month the client officers will inspect all properties as they are completed to ensure they meet the required standard, and all of the elemental works required have been completed. If the work is incomplete, or does not meet the required standard, the property will not be “closed” until this is addressed. Once a property has been “closed” the service provider can then submit it for payment as part of their next monthly invoice process. The client then checks details of all of the properties closed and the details of work completed at each address against the invoice submitted and once satisfied it is accurate, a payment is authorised. This process is repeated monthly for the duration of the Task Order, and costs are monitored both through the individual service provider monthly monitoring meetings and monthly Core Group meetings (with the contract managers for the two service providers Kier and Lovell, and the client manager for the contract, the Repairs and Investment Team Manager), and then on a quarterly basis to the HRA Business Plan Project Board, which includes the Head of Housing and Head of Finance and is chaired by the Director of Services,. This contract budget monitoring is supplemented by the wider Housing Finance Clinics, which monitor all Housing related expenditure on a monthly basis. Information from these budget monitoring processes is then considered monthly, as part of the Council’s wider financial monitoring processes and reported to Members as part of the Quarterly Performance reporting regime. This is supplemented by the Homes and Communities Agency’s monitoring of our performance through both quarterly performance returns and regular monitoring meetings. The District Auditor (KPMG) also checks and verifies our Decent Homes Backlog Funding grant claim on an annual basis, and this was successfully completed for the 2012/13 year.
- 4.4 There are inevitable variations from the detailed works specified in each Task Order in response to factors such as tenant’s choices, and the need to substitute properties as a result of no access or refusals to have the work completed. These variations are



monitored through the same process referred to above and the ongoing spend adjusted accordingly.

- 4.5 The additional costs have been identified in the third year of a five year contract term, although this is the last year of the Decent Homes Backlog funding element of the improvement programme. The 2015/16 and 2016/17 improvement programmes will also be delivered through the existing TPC framework, against improvement priorities which will be determined in the forthcoming months. Once these priorities are determined, the 2015/16 programme will be developed and costed, and it is intended that the confirmed cost will be used to develop the detailed budget proposals for the 2015/16 Housing Capital Programme. By doing this we will ensure that adequate budget provision is made as part of the normal budget setting process.
- 4.6 The original aims of the project were to complete improvement works to a projected 3729 Council tenants' homes that were believed to be either already Non Decent, or would fail the Decency standard before March 2015. The project would also provide the contractual framework to deliver two subsequent years' improvement programmes in 2015/16 and 2016/17 after the Decent Homes Backlog Funding element has been completed in 2014.15. The assessment of both the number of properties that were Decent/Non Decent and the amount of work required to each one, was based on the stock condition information we held at the time of our bid for Decent Homes Backlog Funding, and this has subsequently been refined to ensure we are completing works that need to be addressed by completing stock condition "scoping surveys" of each tenant's home.
- 4.7 This approach has been taken to minimise any unforeseen costs as a result of using inaccurate stock condition information which could lead to substantial variations between the Task Order cost and the actual works required when assessed at the time the service provider starts work at an address.
- 4.8 Taken together it is considered that the contract management and cost control environment for the delivery of the DHIP programme represents a robust approach which includes external audit checks and monitoring by the Homes and Communities Agency, and the original aims of the project were sufficiently clear and have been adhered to in delivering the programme of improvement works.
- 4.9 The options listed in section 3.6 of the Cabinet report referred to the areas that were considered to be the viable options to address additional costs that had been identified, and Section 4 of the Cabinet report then went on to explain how we evaluated these options and arrived at the final recommendation of Option C which was supported by the Cabinet.
- 5.0 CALL – IN GROUND 4**
- 5.1 The fourth call in ground is "In addition we would like to consider recommendation 3 in the report, in order to ensure the options proposed and the reasons for this further funding request are sufficiently explained". The next sections of this report will explain why the options in the report were chosen, and the level of detail associated with each of them.
- 5.2 Recommendation 3 of the report states that Cabinet -

### **3. AGREES TO RECEIVE A FURTHER REPORT AT ITS NEXT MEETING ON 24 JUNE 2014 REGARDING THE FUNDING OPTIONS TO COMPLETE DECENT HOMES IMPROVEMENTS TO THE ADDITIONAL NON DECENT PROPERTIES RECENTLY IDENTIFIED.**

- 5.3 In order to advise members regarding the financial implications of completing works to these additional properties and to confirm the number of properties affected, further work is currently underway regarding an analysis of the projected/actual outturn of the 2014/15 programme.
- 5.4 It is therefore proposed that the report detailing the options for addressing the additional non Decent Homes will be referred to a future meeting of the Policy Development Group prior to consideration at Cabinet on 24 June 2014 and if supported Council on 1 July 2014. The next scheduled meeting of Policy Development Group within the draft programme of meetings for 2014/15 is on 2 July 2014. Clearly an additional meeting of the Group will be required to consider this matter in advance of Cabinet (24 June) and Council (1 July).
- 5.5 In determining our approach to the additional non decent properties, the initial question will be whether or not to seek to complete this work in 2014/15 or to defer it till 2015/16 or beyond.
- 5.6 Undertaking the works earlier will allow us to maximise the probability of all tenants homes meeting the Decent Homes standard by March 2015, however it does introduce risks, principally regarding the need for the Service Providers to price the works and mobilise to deliver them part way through the 2014/15 year, rather than as part of the overall annual programme of works.
- 5.7 If the works are to be delivered in 2014/15 once a price has been obtained from the Service Providers, consideration can be given to the various potential sources of funding to complete the works
- 5.8 As part of the process of evaluating the funding options, a revised version of the HRA Business Plan is being developed. This plan will include an assessment of the impact of the additional funding required for the 2014/15 programme, as well as a range of other changes in the operating environment within which the Housing Service is being delivered since the original plan was approved.

### **6.0 THE PROCESS**

- 6.1 The process for dealing with a call-in by members is set out in the constitution, Scrutiny Procedure Rules (page 140-146). In summary, these provide for the following process.
- i. Call-in should be used in exceptional circumstances where the Policy Development Group has evidence which suggests that Cabinet did not take its decision in accordance with the principles of decision making (in Article 13 of the constitution – page 26). These are:
    - a. proportionality (i.e. the action must be proportionate to the desired outcome).
    - b. due consultation and the taking of professional advice from officers.
    - c. respect for human rights.
    - d. a presumption in favour of openness.

- e. clarity of aims and desired outcomes.
  - f. explaining what options were considered and giving the reasons for the decision.
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- ii. The call-in was received by the Head of Legal and Support Services in time, in writing and duly signed by those members wishing to call it in. There were no grounds to reject the call in.
  - iii. If, having considered the decision, Policy Development Group are concerned about it, they may refer it back to Cabinet for reconsideration, with reasons and the nature of their concerns in writing.
  - iv. Cabinet will then reconsider the decision and amend it or not before adopting a final decision.
  - v. Policy Development Group may also, if concerned about the decision, decide to refer the matter to Council. Again, they would need to provide reasons and the nature of their concerns in writing. If the matter is referred to Council and they do not object then no further action is necessary and the decision will be effective from the date of that Council meeting.
  - vi. If Council do object to the decision they can refer it back to the next scheduled Cabinet for reconsideration with reasons and the nature of their concerns. The process is then as set out at (iv) above.

## Appendix 1

**Report to Cabinet 4 March 2014 – ADDITIONAL COSTS OF THE DECENT HOMES IMPROVEMENT PROGRAMME 2014/15 and associated Appendices.**