

## MUNICIPAL YEAR 2015/2016 REPORT NO.

### ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

### PORTFOLIO DECISION OF:

Ian Davis – Director,  
Environment &  
Regeneration

Cllr Ahmet Oykenner -  
Cabinet Member for  
Housing & Regeneration

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<b>Agenda – Part: 1</b>	<b>KD Num: 4166</b>
<b>Subject: Council Housing Concierge Service Award</b>	
<b>Wards: Lower Edmonton and Ponders End</b>	

### 1. EXECUTIVE SUMMARY

The Council Housing contract was due to expire on 1 April 2014. However, two consecutive waivers were agreed to extend the current contract for up to six months in total to enable the completion of the tendering process. This report seeks approval to award the new contract from October 2015.

### 2. RECOMMENDATIONS

2.1 For the reasons stated in this report, the Council now seeks the following:

2.1.1 Approve the award of the contract to “Contractor A” who is the successful tenderer, as detailed in the part 2 report.

2.1.2 To approve the commencement of the contract from 1 October 2015 for a period of one year with an option to extend by a further 3 x one year periods.

2.1.3 To approve Contractor A’s tendered price detailed in the Part 2 report.

2.2 To note that the contract has been designed to take into account the diminishing nature of the service to be provided at the Alma Road Estate because of the regeneration of the estate.



### **3. BACKGROUND**

- 3.1 The existing concierge contract was procured for a two year period with a one year extension option. The Council took up that extension and the current contract was due to expire on 30 June 2014. The contract was subsequently extended to give sufficient opportunity for a new contract to be procured without disruption of service to the affected residents. The monitoring arrangements predominantly support the provision of physical presence at the Alma Road Estate and separately at Walbrook House. The hours of the service are 08:00 – 23:00 on weekdays and 10:00 – 18:00 on weekends and public holidays.
- 3.2 Residents were surveyed to ascertain their views on continuing the service. Out of 541 surveys sent out at the time there was a response of 111 in favour of retaining the existing service provision; a return rate of 20.5%.
- 3.3 To meet procurement regulations this contract had to be re-tendered. This procurement was conducted under the Public Procurement Regulations 2006 (as amended) and a compliant OJEU procurement process was undertaken.
- 3.4 From the PQQ evaluation those companies identified as suitable were invited to tender in the formal Invitation to Tender (ITT) phase. The details of the tender evaluation can be found in the Part 2 report.

### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 The current extended concierge contract is due to expire on 30 September 2015 (this was subject to 3 waivers being agreed to ensure uninterrupted continuity of service to residents) and procurement and government regulations require the contract to be re-tendered.
- 4.2 An option to consider bringing the service in-house was rejected on the grounds it would not be economically viable particularly in light of the fact that this is a diminishing contract due to the planned demolition of the blocks on the Alma Road Estate.

### **5. REASONS FOR RECOMMENDATIONS**

- 5.1 This contract has been evaluated and considered to cover the requirements of the service favoured by residents.
- 5.2 The successful bidder returned a compliant bid and scored highly on the quality assessment process.

## **6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

### **6.1 Financial Implications**

Please see Part 2 Report.

### **6.2 Legal Implications**

Please see Part 2 Report.

### **6.3 Property Implications**

Any occupation or use of Council owned assets must comply with the requirements of the Property Procedure Rules which not only identifies the approval process but specifically any occupation and use is correctly documented with agreed terms and conditions. It is expected that this issue will be documented within the signed service contract.

## **7. KEY RISKS**

If this contract was not approved, there could be an impact on security and safety of residents who regard this service as a crucial to the well-being of residents as well as a deterrent to anti-social behaviour.

## **8. IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

The concierge service aims to keep all residents and visitors to the blocks/estate safe.

### **8.2 Growth and Sustainability**

8.2.1 Taking into account the diminishing nature of the contract due to the fact that 3 of the blocks (Alma Road Estate) are due for demolition, there is little point investing in new equipment on that estate. The situation for Walbrook House can also be reviewed at a future point but, whilst the existing equipment has limitations, having a manned service is effective for the hours of operation.

8.2.2 This contract is designed to sustain services and community safety where it is in operation.

### **8.3 Strong Communities**

8.3.1 The provision of concierge services under this contract will support the reduction of anti-social behaviour and criminal activity.

8.3.2 The Council Housing concierge service EPSC is a front line operational service in partnership with the Council's EPSC and other partner agencies to resource and support incident management thereby aiming to detect and reduce crime, and Anti-Social Behaviour, assist in providing protection and reassurance to vulnerable members of the public.

## **9. EQUALITIES IMPACT IMPLICATIONS**

There is an obligation in the contract for the contractor to comply with the Council's relevant policies and codes of practice in relation to employment and equal opportunities.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

10.1 This contract specification has a comprehensive performance management and Key Performance Indicators (KPI) set to ensure not only compliance with standards set but also to obtain and show continuous improvement throughout the life of the contract. The contract will be monitored and managed by the Tenancy Management service within Council Housing to ensure that the requirements of the contracts are fulfilled and that standards are maintained.

10.2 This contract also specifies that the contractor shall ensure the concierge services it will deliver and will obtain all British and other industry standards of operation in all areas of services it provides.

## **11. HEALTH AND SAFETY IMPLICATIONS**

Health and safety policies of all bidders were considered during the tender process. In addition, there were no direct health impacts on services from this contract.

## **12. PUBLIC HEALTH IMPLICATIONS**

This contract is able to provide services which improve the health and safety of residents, visitors and LBE employees that have business at the blocks.

### **Background Papers**

None.



## MUNICIPAL YEAR 2015/2016 REPORT NO.

### PORTFOLIO DECISION OF:

- Director of Finance, Resources and Customer Services
- Director of Regeneration and Environment
- Cabinet Member for Finance and Efficiency
- Cabinet Member for Housing and Housing Regeneration

Agenda – Part: 1

**Subject: Small Sites (1) Development Agreement Variation and Deed of Covenant**

**Wards: All**

**Cabinet Member consulted: Cllr Oykenner, Cllr Stafford**

### REPORT OF:

Director of Finance,  
Resources and Customer  
Services

Contact officer and telephone number:

Hayley Coates ([Hayley.coates@enfield.gov.uk](mailto:Hayley.coates@enfield.gov.uk) or 020 8379 3087)

### 1. EXECUTIVE SUMMARY

- 1.1 In July 2012 Cabinet approved the Small Housing Sites regeneration project, to clear, remediate and redevelop a number of sites to create 94 new homes (KD3517). Following negotiation, the Council entered into a Development Agreement with the developer (Kier Project Investment Limited) in September 2014.
- 1.2 The Development Agreement sets out the key terms that both the Council and the developer must comply with. This report seeks authorisation to further vary the Development Agreement, to require that the Council provides evidence that a loan agreement for the full value of the development fees is in place, however, removes the requirement to have the full value of funds cleared in the company bank account. This will enable the company to draw down the loan in instalments which will support better management of company cash flow. This will be of benefit to the Council as the sole shareholder but will also enable the Council to mitigate the risk associated with the transfer of a significant volume of cash in a single instalment.
- 1.3 The Development Agreement, as currently drafted, transfers the obligations to pay the developer to the local authority company once this has been established and the leases are assigned. However, the Development Agreement is silent on the transfer of benefits associated within the agreement, for example, the ability for the company to pursue the developer for Liquidated Damages in the event of delays.





- 1.4 A number of options have been explored with the developer to enhance the company's contractual position and therefore the Council's as sole shareholder. This report seeks approval to enter into a Deed of Covenant with Enfield Innovations Ltd, Kier Project Investment Limited and Kier Limited. This will provide Enfield Innovations Ltd with a direct contractual link with the developer in respect of its construction and development obligation under the Development Agreement, enabling the company to mitigate its risks regarding the assignment of defective properties. The Council is required to be party to the Deed of Covenant as Guarantor to the company.

## **2. RECOMMENDATIONS**

- 2.1 Approve the Deed of Variation to the Development Agreement between the Council and Kier Project Investment Limited and delegate approval to the Assistant Director of Legal and Governance to execute this on behalf of the Council.
- 2.2 Approve the Deed of Covenant between the Council, Enfield Innovations Ltd, Kier Project Investment Limited and Kier Limited and delegate approval to the Assistant Director of Legal and Governance to execute this on behalf of the Council.
- 2.3 Note that the Deed of Variation and Deed of Covenant documents have been prepared by Browne Jacobson, considering the interests of both the Council and Enfield Innovations Ltd.

## **3. BACKGROUND**

- 3.1 In July 2012 Cabinet approved the Small Housing Sites regeneration project, to clear, remediate and redevelop a number of sites to create 94 new homes (KD3517). Following this, further decisions have been taken to progress this development. This has included the appropriation of the land required for the completion of the new units (KD 3780 taken by Cabinet in March 2014), authorisation of funding (KD 3780 taken by Council in April 2014), appointment of the developer (KD 3826 Portfolio decision in March 2014) and authorisation to establish a Special Purpose Vehicle to own and manage the units (KD 3890 by Cabinet in July 2014).
- 3.2 The Portfolio decision to appoint the developer (KD 3826) authorised the Council's Assistant Director Legal to obtain all the necessary statutory consent and enter into a Development Agreement and all other legal documentation that the Council is obliged to complete to comply with the Development Agreement. Following negotiation the Council entered into a Development Agreement with the developer (Kier Project Investment Limited) in September 2014.



- 3.3 The Development Agreement sets out the key terms that both the Council and the developer must comply with. Currently clause 5.3 of the Development Agreement requires the Council to grant a loan and provide evidence of cleared funds for the full value of the loan to the company prior to the assignment of the first leases.
- 3.4 This report seeks authorisation to vary the Development Agreement to require that the Council provides evidence that a loan agreement for the full value of the development fees is in place, however, removes the requirement to have the full value of funds cleared in the company bank account. This will enable the company to draw down the loan in instalments which will support better management of company cash flow. This will be of benefit to the Council as the sole shareholder but will also enable the Council to mitigate the risk associated with the transfer of a significant volume of cash in a single instalment.
- 3.5 Discussions have taken place with Kier Project Investment Limited, the developer, who has provided consent to vary the Development Agreement subject to receiving confirmation that a loan agreement is in place to cover the total value of the development. It is also proposed that the company name and details are inserted into the Development Agreement now it has been established, rather than referring to this as the "Special Purpose Vehicle".
- 3.6 A deed of variation has been drafted by Browne Jacobson and is attached to Appendix 1.
- 3.7 The Development Agreement, as currently drafted, transfers the obligations to pay the developer to the local authority company once this has been established and the leases are assigned. However, the Development Agreement is silent on the transfer of benefits associated within the agreement, for example, the ability for the company to pursue the developer for Liquidated Damages in the event of delays.
- 3.8 Legal advice has been sought from Browne Jacobson which highlights the risk of the absence of a contractual link between the company (Enfield Innovations Ltd) and Kier Project Investment Limited as the developer. In the event that the company needs to rely on any of the benefits within the Development Agreement it would need to request that the Council takes action on its behalf.
- 3.9 A number of options have been explored with the developer to enhance the company's position and therefore the Council's as sole shareholder. The developer is not agreeable to a novation or assignment of the Development Agreement. As a result, a Deed of Covenant is proposed as this would provide Enfield Innovations Ltd with a direct contractual link with Kier in respect of its construction and development obligation under the Development Agreement, enabling the company to mitigate its risks regarding the assignment of defective properties.



- 3.10 The Deed of Covenant will be between Enfield Innovations Ltd, the Council, Kier Limited and the developer. This will sit alongside the Development Agreement, so does not reduce the Council's rights in relation to the Development Agreement, however, it does enhance the company's position. It should be noted that the Deed of Covenant is in respect of the developer's construction obligations under the Development Agreement, therefore at the any of the Defects Liability Period both the Council and Enfield Innovations Ltd will need to rely on its collateral warranties from the contractor and the professional team.
- 3.11 The Deed of Covenant has been drafted by Browne Jacobson, considering both the Council's and company's position, and is attached as Appendix 2. The Deed of Covenant has been approved by the Enfield Innovations Ltd Board of Directors.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 The Development Agreement could remain in place in its existing form. This is not recommended as it would require the Council to transfer the full value of the loan to the company and evidence cleared funds prior to the assignment of the leases. This would trigger the repayment clauses before the construction is complete on all properties and have a negative impact on the company's cash flow and financial viability.
- 4.2 The Council and Enfield Innovations Ltd could not enter into a Deed of Covenant with Kier Limited and the developer and rely solely on the Development Agreement. This is not recommended as it would reduce the company's ability to claim benefits under the Development Agreement and this Deed of Covenant provides an enhanced level of protection for the company and therefore the Council, as sole shareholder.
- 4.3 The Development Agreement could be assigned or novated from the Council to Enfield Innovations Ltd. This has been explored but was not deemed acceptable by Kier Project Investment Limited so cannot be pursued further.

#### **5. REASONS FOR RECOMMENDATIONS**

- The Deed of Variation will enable the Council to grant the loan in instalments and thus provide better cash flow management for the company, enhancing financial viability which will be of benefit to the Council as sole shareholder.
- The Deed of Covenant will provide Enfield Innovations Ltd with a direct route of redress to the developer in respect of its construction and development obligations under the Development Agreement, thereby mitigating the risk to the company associated with the assignment of



defective properties. This will serve to benefit the Council's interests as sole shareholder.

- A number of options were explored with Kier Project Investment Limited to ensure that Enfield Innovations Ltd has a contractual link with the developer to mitigate the risk associated with defective properties, which included consideration of assignment or novation. The Deed of Covenant has been accepted by Kier Project Investment Limited.
- Enfield Innovations Ltd's Board of Directors have noted the proposed Deed of Variation and endorsed this and also approved the Deed of Covenant.

## **6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

### **6.1 Financial Implications**

6.1.1 The Small Sites development is being funded from the £17.3m re-allocated from the Investment in Private Rented Sector (Cabinet Report Addendum 206A). In addition, part of the costs of developing the social units within the development is funded from the Right to Buy receipts.

6.1.2 The variation should provide both company and Council with better cash flow management and reduce interest on borrowing.

### **6.2 Legal Implications**

6.2.1 The Council has power under section 1(1) of the Localism Act 2011 to do anything which individuals generally may do provided it is not prohibited by legislation and subject to public law principles. There is no express prohibition, restriction or limitation contained in a statute against use of the power to undertake the Enfield Innovations scheme in the manner envisaged by the recommendations in this report.

6.2.2 The Council has the power to enter into both the Deed of Variation and the Deed of Covenant under, without limitation, powers contained in section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972, which permits a local authority to do anything (whether or not involving the expenditure, borrowing or lending of money of the acquisition or disposal of any property or right) which is calculated to facilitate or is





conducive or incidental to the discharge of any of their functions.

6.2.3 The Deed of Variation restructures the financial mechanisms under the Development Agreement and should not be regarded as a material variation under procurement law. The variation adds extra financial protection for the Council and SPV in a manner than was volunteered by the Developer. The overall consideration under the Development Agreement remains unchanged.

6.2.4 There are no procurement law implications in relation to the Deed of Covenant as it is not a contract for works or services.

### 6.3 Property Implications

None.

## 7. KEY RISKS

- **The Deed of Variation and Deed of Covenant are not approved by Kier.** This has been mitigated by negotiating the terms with Kier as part of the development of the documents.
- **Enfield Innovations Ltd has a negative cash flow arising from a requirement under the existing Development Agreement for the company to be in cleared funds of the full value of the loan before assignment, triggering interest repayments prior to the properties being completed and an income stream being in place.** This has been mitigated by seeking a variation to the Development Agreement to enable the loan to be drawn down in instalments as required.
- **Enfield Innovations Ltd is not able to access benefits under the Development Agreement directly and has no direct re-course with Kier Project Investment Limited should there be any defects.** This has been mitigated by the development of a Deed of Covenant.

## 8. IMPACT ON COUNCIL PRIORITIES

### 8.1 Fairness for All

The formation of Enfield Innovations Ltd enables the Council to access finance to increase the supply of good quality, value for money private housing in the borough.



## **8.2 Growth and Sustainability**

Access to good quality, stable housing is a key aspect of a person's health and wellbeing. By using long term finance the Council will remove concerns over refinancing or the need to sell properties after a few years. Furthermore by ensuring properties are maintained to a good standard, the scheme will be able to increase the supply of quality accommodation and in turn improve health and wellbeing and prospects of securing employment by increasing the supply of private rented accommodation in the borough.

## **8.3 Strong Communities**

By increasing the supply of quality, well managed private homes this will support the Council to develop stronger communities by enabling residents to access quality accommodation within the borough.

## **9. EQUALITIES IMPACT IMPLICATIONS**

An overarching Equalities Impact Assessment was undertaken as part of the development of the business model.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

Enfield Innovations Ltd will develop, own and manage a portfolio of new, high quality properties in the borough, increasing the overall supply. This will support the Council to develop stronger communities and make a positive impact against wider objectives, such as reducing employment and improving health and wellbeing.

## **11. PUBLIC HEALTH IMPLICATIONS**

By increasing the supply of good quality housing in the borough, health and wellbeing of individuals will be improved. All properties developed will be fit for purpose and maintained to a high quality.

## **Background Papers**

None.



## MUNICIPAL YEAR 2015/2016 REPORT NO.

### PORTFOLIO DECISION OF:

- Director of Finance, Resources and Customer Services
- Director of Regeneration and Environment
- Cabinet Member for Finance and Efficiency
- Cabinet Member for Housing and Housing Regeneration

Agenda – Part: 1

**Subject: Terms of Loan Agreement Between the Council and Enfield Innovations Ltd**

**Wards: All**

**Cabinet Member consulted: Cllr Oykenor, Cllr Stafford**

### REPORT OF:

Director of Finance,  
Resources and Customer  
Services

Contact officer and telephone number:

Hayley Coates ([Hayley.coates@enfield.gov.uk](mailto:Hayley.coates@enfield.gov.uk) or 020 8379 3087)

### 1. EXECUTIVE SUMMARY

- 1.1 In July 2014 Cabinet agreed to establish a wholly owned local authority company to develop, own and manage a portfolio of new homes for local people to be available for market rent (KD 3890). This is part of a wider redevelopment strategy to increase the supply of value for money, quality accommodation in Enfield. Cabinet agreed that the initial portfolio would comprise 57 private homes with the ability to add additional homes if further development opportunities arise.
- 1.2 Cabinet agreed to delegate, to the lead company directors, authority to finalise key company documentation and all other matters necessary to facilitate the objective of increasing the supply of high quality, private rented units (KD 3890).
- 1.3 The funding was agreed prior to the creation of the company by Council in April 2014. This was based on Council borrowing the required funding and on-lending this to the local authority company, which would then be re-paid in full at a commercial rate to comply with State Aid over a 40 year period. The funding allocation was deducted from an earlier borrowing decision for the Investment in Private Rented Sector project.
- 1.4 The local authority company – Enfield Innovations Ltd – has now been formed and legal documentation has been drafted to enable the assignment of leases from Kier Projects Investment Limited to the company prior to the date of

Practical Completion for the first property, as required under the Development Agreement (terms of the Development Agreement were approved via KD 3826). An essential requirement of the assignment of leases is to evidence to Kier Projects Investment Limited that a loan agreement is in place between the Council and Enfield Innovations Ltd and to transfer the value of the first payment to be made.

- 1.5 Browne Jacobson has drafted a Facility Letter, which provides the mechanism for the loan agreement between the Council and Enfield Innovations Ltd. The Facility Letter has been approved by the Board of Directors for Enfield Innovations Ltd and this report seeks approval of the terms of the loan agreement from the Council.

## **2. RECOMMENDATIONS**

- 2.1 Note that the Facility Letter has been drafted by Browne Jacobson as part of the set up Enfield Innovations Ltd, to ensure a formal audit trail is in place for the loan to the company and to provide the framework for the terms of the loan.
- 2.2 Note that Council approved the value of the loan between the Council and the company In March 2014 via KD 3826.
- 2.3 Approve the Facility Letter, which sets out the terms of the loan agreement between the Council and Enfield Innovations Ltd.

## **3. BACKGROUND**

- 3.1 In July 2014 Cabinet agreed to establish a wholly owned local authority company to develop, own and manage a portfolio of new homes for local people to be available for market rent (KD 3890). This is part of a wider redevelopment strategy to increase the supply of value for money, quality accommodation in Enfield. Cabinet agreed that the initial portfolio would comprise 57 private homes with the ability to add additional homes if further development opportunities arise.
- 3.2 Cabinet agreed to delegate, to the lead company directors, authority to finalise key company documentation and all other matters necessary to facilitate the objective of increasing the supply of high quality, private rented units (KD 3890).
- 3.3 The funding was agreed prior to the creation of the company by Council in April 2014. This was based on Council borrowing the required funding and on-lending this to the local authority company, which would then be re-paid in full at a commercial rate to comply with State Aid over a 40 year period. The funding allocation was deducted

from an earlier borrowing decision for the Investment in Private Rented Sector project.

- 3.4 The local authority company – Enfield Innovations Ltd – has now been formed and legal documentation has been drafted to enable the assignment of leases from Kier Projects Investment Limited to the company prior to the date of Practical Completion for the first property, as required under the Development Agreement (terms of the Development Agreement were approved via KD 3826). An essential requirement of the assignment of leases is to evidence to Kier Projects Investment Limited that a loan agreement is in place between the Council and Enfield Innovations Ltd and to transfer the value of the first payment to be made.
- 3.5 Browne Jacobson has drafted a Facility Letter, which provides the mechanism for the loan agreement between the Council and Enfield Innovations Ltd. The Facility Letter has been approved by the Board of Directors for Enfield Innovations Ltd and this report seeks approval of the terms of the loan agreement from the Council.
- 3.6 The value of the Facility Letter reflects the funding agreed by Cabinet and later Council. The Facility Letter has been drafted to enable the loan to be given to Enfield Innovations Ltd in instalments to minimise unnecessary interest repayment costs before the units are completed and to better manage cash flow. The Facility Letter therefore contains a schedule that can be completed for every instalment. The maximum value of the Facility Letter is equal to the loan agreed by Cabinet and later Council; any additional funding requirements would be subject to a separate decision.
- 3.7 The Facility Letter sets out the terms of the loan agreement. This stipulates that the loan can only be used by Enfield Innovations Ltd to support the activities agreed by the shareholder. In line with the Cabinet decision, the remit of Enfield Innovations is to develop, own and manage properties that can be privately rented. The loan can therefore only be used for this purpose, unless the shareholder agrees to additional activities at a later date.
- 3.8 The Council will set the interest rate for the loan and where properties are intended to be leased at market rent this will be a commercial loan rate to comply with State Aid. In addition there is an optional Arrangement Fee and Commitment Fee that can be charged by the Council. In line with the Facility Letter this will be determined by the Director of Finance, Resources and Customer Services.
- 3.9 Enfield Innovations Ltd is able to voluntarily repay the loan to the Council earlier than scheduled but this may involve additional financial consequences. This provides flexibility in case housing needs change and properties are no longer required and the company needs to sell them to release capital.

3.10 The Facility Letter provides the overarching terms of the loan agreement. To issue the instalments of the loan, Schedule 3 will need to be completed by the Borrower (Enfield Innovations Ltd) and the Lender (Enfield Council). Schedule 3 sets out the drawdown date, amount and interest period.

3.11 The Facility Letter has been produced by Browne Jacobson, acting on behalf of both the Council and Enfield Innovations Ltd.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

4.1 A Facility Letter with a single instalment could be agreed. However, this has been discounted as it does not provide the opportunity for the company to access funding in a phased approach based on the construction timeline.

4.2 The loan could be issued to the company with the absence of a formal agreement, given it involves the transfer of funds from the sole shareholder to the company. This is not considered a viable option as the loan will be a significant sum of money and the absence of a formal agreement would result in significant risk for both parties and would not meet audit guidelines.

#### **5. REASONS FOR RECOMMENDATIONS**

- A Facility Letter is required to facilitate the issue of the loan between the Council and Enfield Innovations Ltd and provide clear terms of repayment.
- The Facility Letter has been drafted by Browne Jacobson acting on behalf of both the Council and Enfield Innovations Ltd.
- The Facility Letter has been drafted to enable the company to access the loan in instalments, to coincide with the construction timetable. This will enable the company to manage its cash flow and avoid accruing costly interest rates when the company does not require the loan.
- Schedule 3 of the Facility Letter provides the opportunity for the Council to set the interest rate for each loan instalment. This enables the Council to take into account the interest rate at the drawdown date. This also enables the Council to set a commercial interest rate for the loan if properties are to be leased at market rent or a lower interest rate if there is a future decision to charge sub-market rent.
- Enfield Innovations Ltd's Board of Directors have approved the terms of the loan in the form of the Facility Letter.



## **6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

### **6.1 Financial Implications**

6.1.1 The £17.3m will be funded by borrowing from two sources: 50% from the European Investment Bank (EIB) and 50% from Public Works Loan Board (PWLB). The borrowing will be subject to State Aid. At present the reference is 4.89%. Principal will be repaid over 40 years (anticipated life of the buildings) on an annuity basis. Interest and principal repayments will be on 6 monthly intervals.

### **6.2 Legal Implications**

6.2.1 The Council has power to establish and participate in the Small Sites scheme (Enfield Innovations Ltd) in accordance with section 1 of the Localism Act 2011 and section 95 of the Local Government Act 2003. In addition, section 111 of the Local Government Act 1972 permits a local authority to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or right) which is calculated to facilitate, or is conducive or incidental to the discharge of any of their functions. It also has the necessary powers to borrow funding pursuant to section 1 of the Local Government Act 2003 and to provide a loan, grant funding and/or share capital to the SPV under, without limitation, powers contained in section 1 of the Localism Act 2011, section 12 of the Local Government Act 2003, sections 24 & 25 of the Local Government Act 1988 and section 111 of the Local Government Act 1972.

6.2.2 The Facility Letter is structured in a way so that lending is at interest rates determined by the Council and is therefore likely, provided that the Council charges an appropriate rate of interest and acts in a commercial manner in relation to that loan, to be state aid compliant.

6.2.3 There are no procurement law implications in relation to the Facility Letter as it is only regulating a loan arrangement and is not a contract for works or services.

6.2.4 The Facility letter is in a form approved by the Assistant Director of Legal Services and Governance.

### **6.3 Property Implications**

None.

## 7. KEY RISKS

- **The interest rate of the loan that the Council can access to then on-lend to Enfield Innovations Ltd is not at a constant rate so the Council has to subsidise the loan rate if this changes over the course of the loan period.** This has been addressed by providing the flexibility to set the interest rate for each instalment of the loan, as determined by Schedule 3.
- **Housing needs or financial viability changes and the properties are no longer required/viable.** This has been mitigated by providing the flexibility for early repayment of the loan, for example if Enfield Innovations Ltd needed to sale a property to release capital.
- **Non-payment by Enfield Innovations Ltd of the developer's invoices will result in the Council having to put the company in cleared funds to the full value of the loan, in accordance with the Development Agreement.** This will be mitigated by devising a clear operational process for the payment of invoices by the company to ensure payment is made in the required timescale.

## 8. IMPACT ON COUNCIL PRIORITIES

### 8.1 Fairness for All

The formation of Enfield Innovations Ltd enables the Council to access finance to increase the supply of good quality, value for money private housing in the borough. The Facility Letter and grant of a loan to Housing Gateway Limited is a key component of the model agreed by Cabinet and essential to the successful operation of the company.

### 8.2 Growth and Sustainability

Access to good quality, stable housing is a key aspect of a person's health and wellbeing. By using long term finance the Council will remove concerns over refinancing or the need to sell properties after a few years. Furthermore by ensuring properties are maintained to a good standard, the scheme will be able to increase the supply of quality accommodation and in turn improve health and wellbeing and prospects of securing employment by increasing the supply of private rented accommodation in the borough.

### 8.3 Strong Communities

By increasing the supply of quality, well managed private homes this will support the Council to develop stronger communities by

enabling residents to access quality accommodation within the borough.

**9. EQUALITIES IMPACT IMPLICATIONS**

An overarching Equalities Impact Assessment was undertaken as part of the development of the business model.

**10. PERFORMANCE MANAGEMENT IMPLICATIONS**

Enfield Innovations Ltd will develop, own and manage a portfolio of new, high quality properties in the borough, increasing the overall supply. This will support the Council to develop stronger communities and make a positive impact against wider objectives, such as reducing employment and improving health and wellbeing.

**11. PUBLIC HEALTH IMPLICATIONS**

By increasing the supply of good quality housing in the borough, health and wellbeing of individuals will be improved. All properties developed will be fit for purpose and maintained to a high quality.

**Background Papers**

None.



**MUNICIPAL YEAR 2015/2016 REPORT NO.**

**Part 1**

**MEETING TITLE AND DATE:**

Key Decision by the  
Director of Health,  
Housing and Adult Social  
Care

**Agenda – Part 1**

**Item:**

**Subject: Parkview**

**Wards: All**

**Cabinet Member consulted:**

**None**

**REPORT OF:**

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**1. EXECUTIVE SUMMARY**

- 1.1 This Delegated Authority Report seeks to extend the current contract arrangements with the current service provider at Parkview House.
- 1.2 This report provides information pertaining to the current arrangements.

**2. RECOMMENDATIONS**

- 2.1 It is recommended that the Council enters into a deed of variation with Sanctuary Housing Association to extend the contract dated 5<sup>th</sup> August 2013 for a further year to 4<sup>th</sup> August 2016.

**3. BACKGROUND**

- 3.1 The current service for residential dementia is delivered by Sanctuary Housing Association ("Sanctuary"), who was awarded the contract in 2013 following the Richmond Fellowships decision to give notice and withdraw from providing residential and dementia care services at Parkview.
- 3.2 The scheme is a 45 bed residential home divided into 5 clusters of 9 beds.

- 3.3** Parkview House is Enfield's only specific Elderly Mentally Infirm (EMI) residential unit, supporting service users with mild to profound dementia.
- 3.4** The contract was initially for two years with a one year extension option.
- 3.5** This contract is monitored on a quarterly basis by the Enfield's Contract Review Team. In the past two years there have been no major concerns with the service and at the last quarterly monitor visit it was noted that major redecoration had taken place within the building and that service users were pleased. Sanctuary also have plans to improve the garden and pond area.
- 3.6** Quality Checkers also visited the home in November 2014 and the overall impression was 'very good. A well-managed home'. They also commented on service users looking clean and tidy and there being a good selection of food available.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1** To retender service would still require a minimum extension of six months in order to ensure that the appropriate consultation was undertaken and allow for the build to be completed.

#### **5. REASONS FOR RECOMMENDATIONS**

- 5.1** Extending the contract for the year would allow Enfield to agree a strategic approach as to the future of these homes

#### **6. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE RESOURCES AND OTHER DEPARTMENTS**

##### **6.1 Financial Implications**

The invoices issued by Sanctuary for service provision at Parkview are £112,719.60 every 4 weeks, giving an annual contract value of £1,465,354.80 (SS0161).

There is available budget within the Customer Pathway to cover the contract for 15/16. Once the contract is re-let in 16/17 the contract value will need to be reviewed in line with the Council's efficiency programme.

## **6.2 Legal Implications**

6.2.1 The contents of this report constitute a Key Decision as the proposal for a contract extension will lead to expenditure exceeding £250,000. This item has been included in the Key Decision List (ref. KD 4137). Once approved the decision to proceed will be subject to the usual 5 day call-in period.

6.2.2 The Council has a general power of competence under section 1(1) of the Localism Act 2011 to do anything that individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles. {The recommendations within this report are in accordance with these powers.}

6.2.3 The specific powers of the Council to enter into the original contract with Sanctuary Housing Association dated 5<sup>th</sup> December 2013 are set out in the signed DAR Part 2 dated on or around 31<sup>st</sup> May 2013.

6.2.4 The Council is contractually permitted to extend the current contract with the service provider prior to the expiry date (5<sup>th</sup> August 2015) pursuant to the provisions in the contract (including clauses 8 and 21) for a contract period of 2 years; there is a contractual option for the Council to notify its intention to extend for up to a further 12 months under a Variation. This variation relates to the contract price and duration; there is to be no extension or variation to the scope of the original contract.

6.2.5 The Council will need to seek to agree with the contractor that the full six month contractual notice period is waived.

6.2.6 The variation is required to be recorded in writing in accordance with the Schedule 13B Contract Change Procedure. This requires the variation to be in the form of a contract change note signed in accordance with clause 21. As the original contract was executed under seal, the variation should be recorded and executed as a Deed of Variation.

6.2.7 The sealing requirements of the Contract Procedure Rules (CPR) rule 13 must be complied with (including attestation by or on behalf of the Assistant Director of Legal Services).

6.2.8 The Council must, when extending the contract, comply with the requirements of its Constitution and the Contract Procedure Rules (CPRs).

6.2.9 The Deed of Variation is to be in a form approved by the Assistant Director Legal.

6.2.10 Throughout the engagement of the service provider, the Council must comply with its obligations with regards to obtaining best value under the Local Government (Best Value Principles) Act 1999.

6.2.11 The recommendations within this report are in accordance with these powers.

## **7. KEY RISKS**

- 7.1 If an extension is not agreed with Sanctuary and executed prior to expiry the contract cannot be extended and a gap in service provision could ensue.

## **8 IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

The service is a specialist service supporting those from the community who are suffering from Dementia and would be at risk living independently.

### **8.2 Growth and Sustainability**

There has been investment into the service by Sanctuary especially into the fabric and environment of the building enhancing the experience for the service users.

### **8.3 Strong Communities**

This service provides a safe environment for vulnerable service users suffering from dementia still to be close to their families and friends within the Enfield community.

## **9. PERFORMANCE MANAGEMENT IMPLICATIONS**

- 9.1 The contract and service is monitored on a quarterly basis to ensure the quality of care is maintained. It has received positive feedback from Quality Checkers and the contract extension will provide further continuity.

## **10 HEALTH AND SAFETY IMPLICATIONS**

- 10.1 No Health & Safety implications have been identified.

### **Background Papers**

No Background Papers have been attached