

MUNICIPAL YEAR 2016/2017 REPORT NO. 34

MEETING TITLE AND DATE:

Cabinet: 7th July 2016

JOINT REPORT OF:

Ian Davis, Director of Regeneration and Environment and James Rolfe, Director of Finance, Resources & Customer Services

Contact officer and telephone number:

Bruce McRobie (x4321)

Email: bruce.mcrobie@enfield.gov.uk

Agenda - Part: 1

Item: 12

Subject: Contracting with Lee Valley Heat Network for the provision of heat on Enfield's Housing Estates

Ward: All

Key Decision: KD 3988

Cabinet Members consulted: Cabinet Member for Housing and Housing Regeneration & Cabinet Member for Finance & Efficiency

1. EXECUTIVE SUMMARY

- 1.1 The Housing Development and Renewal team have included a requirement for a distributed heating network facility on all the major developments that they have procured.
- 1.2 These facilities will be fitted out, at the cost of the respective development partner, with mechanical plant and associated equipment appropriately sized to provide heat to all the new homes and other properties on the new developments and with space and pipework to the boundary of the development to enable its expansion to serve nearby developments.
- 1.3 On completion of the new developments, the Council has the option of requiring transfer of ownership of the distributed heating network facility including the mechanical plant and associated equipment either to the Council or to its nominee.
- 1.4 It is the intention to include similar requirements for the provision of a distributed heating network facility fitted out with mechanical plant and associated equipment as one of the minimum requirements in the procurement of development partners on all future estate renewal projects where they are large enough to justify the requirement, and are not within range of an economic extension to an existing district heating system.
- 1.5 The purpose of this report is to seek authority to enter into a series of legal agreements with Lee Valley Heat Network Ltd (LVHN) to give them responsibility for the operation and maintenance of the distributed heating network facility, and to regulate arrangements between the Council and LVHN for existing and new distributed heating network facilities that could be handed over to LVHN to adopt, operate and maintain in the future.
- 1.6 Approval will be separately obtained from LVHN HoldCo Board to enable LVHN to enter into the series of legal agreements referred to in paragraph 1.5

2. RECOMMENDATIONS

That Cabinet:

- 2.1 Notes the progress at paragraphs 3.14 and 3.15 that has been made to agree commercial arrangements between the Council and LVHN for both the operation and maintenance of known energy centre opportunities that will be developed as part of the estate renewal programme and to regulate arrangements for future distributed heating network facilities that may come forward from both the existing estates and from future estate renewal projects.
- 2.2 Delegates authority to the Director of Regeneration and Environment, acting in consultation with the Director of Finance Resources and Customer Services, to agree the terms of and enter into the agreements that need to be put in place to regulate the commercial arrangements between the Council and LVHN. These include a Portfolio Agreement, Site Energy Agreements, and various other relevant template agreements.

3. BACKGROUND

Ladderswood Estate (Now known as Montmorency Park)

- 3.1 On 27th April 2011 (Key Decision 3220) Cabinet authorised the selection of the New Ladderswood LLP, a consortium made up of the commercial subsidiary of One Housing and the contractor Mulalley, as the preferred development partner for the redevelopment of the Ladderswood Estate, (Montmorency Park) including the adjoining New Southgate Industrial Estate.
- 3.2 On 22nd December 2011, the Council entered into a Development Agreement with the New Ladderswood LLP.
- 3.3 The tender for the procurement of the development partner included a requirement for the provision of an energy centre and plant that is both capable of providing heat to all the homes, and other commercial spaces on the new development; but also to provide space to enable the installation of additional mechanical plant to allow for expansion of the distributed heating system to supply heat to the properties on a number of adjoining developments.
- 3.4 The requirement for the energy centre was incorporated in the Development Agreement entered into on 22nd December 2011. Following completion of the Development Agreement the New Ladderswood LLP submitted a planning application and was granted planning consent on 14th February 2014 for a development scheme that includes an energy centre in Phase 1 of the development.

- 3.5 In addition to the new energy centre, Phase 1 of the Ladderswood development (Montmorency Park) also includes the delivery of 40 new homes. These are due to be completed and to be occupied in September 2016.

Alma Estate

- 3.6 On 18th September 2013 (Key Decision 3769), Cabinet authorised the selection of Countryside Properties Ltd, as the preferred development partner for the redevelopment of the Alma estate.
- 3.7 The Council exchanged the Development Agreement with Countryside Properties on 13th November 2014.
- 3.8 As with the development at Ladderswood (Montmorency Park) the tender requirements for the development at the Alma estate also included for the provision of an energy centre that was capable of providing heat to all the new homes and other properties to be constructed on the new development.
- 3.9 The requirement for the energy centre, including capacity for expansion to provide heat to other sites, was incorporated in the Development Agreement entered into on 13th November 2014. Countryside Properties have had an outline planning application for the whole development determined and full (detailed) planning consent for phase 1 of the development has been issued

New Avenue Estate

- 3.10 On 22nd October 2014 (Key Decision 3793), Cabinet authorised the selection of Countryside Properties Ltd, as the preferred development partner for the redevelopment of the New Avenue estate.
- 3.11 The Council is presently in final negotiations for the Development Agreement with Countryside Properties. Countryside Properties have submitted a full planning application for the proposed development.
- 3.12 As for the developments at Ladderswood and the Alma estate, the tender requirements for the development at the New Avenue estate also included for the provision of an energy centre and associated infrastructure that is capable of providing heat to all the new homes and other properties to be constructed on the new development.

It is the Council's intention to enter into Site Energy Agreements with LVHN (see 3.15 below) for Ladderswood, Alma and New Avenue.

Further estate renewal projects

- 3.13 It is the Council's intention to include a requirement for a distributed heating network facility with mechanical plant and associated equipment as

part of the procurement process for all future estate renewal projects where the size of the development can justify the requirement for a centralised energy centre and it is not within range of an economic extension to an existing district heating system.

3.14 It is the Council's intention to enter into an umbrella 'Portfolio Agreement' with LVHN HoldCo's operating subsidiary, Energetik. This will be a framework agreement setting out the basis of collaboration between the parties with respect to the promotion of heat networks on Council-led developments. It will set out the basis for the transfer of those networks to, and for the operation and maintenance of those networks by, Energetik. It will contain a number of agreed-form, contract templates for use on developments to help achieve this. Under the Portfolio Agreement, the parties will agree that:

- the Council will provide Energetik with periodic updates on forthcoming opportunities within the borough for the provision of heat networks;
- LVHN will provide the Council with a specification for the design of on-site heat networks, which will be adopted by the Council for use generally to raise standards on appropriate developments;
- where the development meets relevant criteria on the technical and commercial viability of a district heating network, Energetik will provide an offer for the adoption of the relevant on-site heat network, and subject to approval by both parties, the parties will enter into a Site Energy Agreement (see 3.16 below);
- LVHN will provide the Council with a template asset adoption agreement, heat network connection agreement and template customer heat supply agreements;
- this specification developed by Energetik together with the template asset adoption agreement, heat network connection agreement and template customer heat supply agreements will be adopted by the Council, for use with its development partners, and incorporated into each development agreement (or equivalent arrangement).

Energetik will enter into heat supply agreement with customers in the form of the pre-agreed templates and there will be a review mechanism of the LVHN Business Plan by the council.

3.15 The negotiation and drafting of this Portfolio Agreement, and the template agreements, is well advanced, and it is expected that both the Council and Energetik will be in a position to exchange contracts by the end of July 2016. In relation to development schemes where a heat network is considered appropriate, it is the Council's intention (subject to further delegated approval in each case) to enter into a 'Site Energy Agreement' for each scheme. This will contain the site-specific details for the provision of services by Energetik and, where applicable, specify Energetik's requirements for adoption of the relevant on-site heat network. The form of the Site Energy Agreement is included in the Portfolio Agreement. The form should then be adapted for use on

subsequent developments amended to reflect site-specific differences. Each Site Energy Agreement will address site-specific property issues and will specify the relevant adoption fee payable by Energetik in accordance with the Asset Adoption Agreement and associated consolidated financial model.

- 3.16 Site Energy agreement – The site energy agreements will be tailored to reflect the circumstances of each individual development following the principles laid out in the Portfolio Agreement and the draft Site Energy Agreement that will be attached as an appendix to the Portfolio Agreement.
- 3.17 The Asset Adoption Agreement and associated consolidated financial model are based on assumptions as to the likely investment return from all of the adopted heat network schemes in terms of an investment rate of return (IRR). It is agreed that:
- The consolidated financial model will be updated annually, with the modelled assumptions replaced with actual numbers (or changes in actual numbers since the previous year).
 - For each dwelling that is connected to a heat network that is subject to a Site Energy Agreement, energetik shall pay a minimum adoption fee per dwelling connected subject to the IRR within the consolidated financial model not falling below a minimum threshold. The fee shall be indexed each year on 31st March by CPI.
 - Where a heat network that is subject to a Site Energy Agreement is extended to another development, energetik shall pay a minimum fee per dwelling for the development connected subject to the IRR within the consolidated financial model not falling below a minimum threshold. The fee shall be indexed each year on 31st March by CPI. The extension of the heat network to another development shall be at energetik's sole discretion.

Should in any year the consolidated financial model show an IRR in excess of an agreed higher threshold when it is updated, then energetik shall pay a proportion of the profits above this threshold (before tax) to the Council as a one off super profits payment.

3.18 Resident Engagement

LB Enfield's Housing Development & Renewal, Regeneration, Leisure and Culture Team have engaged widely with residents, local businesses, self-organised groups and others from the outset of the regeneration of their homes and estates.

This engagement has included meetings, seminars, surveys and one to one conversations. Officers and contractors have ensured that this consultation happens in accessible accommodation with translation services available where necessary.

The consultation carried out by the teams has been fundamental to the delivery of these estate renewal programmes. This consultation programme has included the requirement to connect to a heat network.

Energetik's (LVHN) programme of consultation will seek to ensure that Residents, Officers, Councillors, Housing Developers, Self-Organised Groups, businesses know their views have been taken into account and their expertise locally has been used. That we have ensured that views are incorporated to ensure that the best decision, within local and other parameters, can be taken.

Energetik will use current best practice including the EAST framework. The framework was developed by the Behavioural Insights Team (Until recently part of the Cabinet Office). EAST is a mnemonic for Make it Easy, Simple, Attractive and Timely (EAST).

They will use seminars, workshops, exhibitions and meetings. They will also make use of letters and questionnaires. It may also be useful to tap into neighbourhood groups, both organised by the Council and those organised by others. The methods chosen will be those most likely to be welcome by the group/community/age group we are seeking to consult.

Energetik have ensured that consultation is carried out in accessible locations, that signing, translation and hearing loops are available where necessary. That their web site meet the Royal National Institute for the Blind (RNIB) Surf Right Guidelines for web accessibility.

We recognise that Enfield is a diverse Borough "Indeed, such is the diversity of Enfield's population that, in their responses to the 2012 School Census, conducted by the local education authority, Enfield pupils recorded themselves under 97 different ethnic codes." Enfield Joint Strategic Needs Assessment – 2013 Consultation with stakeholders has been undertaken via Neighbourhood events, specific events around the regeneration of Meridian Water, Alma Estate and Ladderswood (Montmorency Park).

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 That the Council manage the operation of each energy centre as they come forward. This has been discounted as the experience of managing distributed heating networks within Council has a poor reputation, and the Council wishes to improve the services received by both tenants and leaseholders on the new developments.
- 4.2 That the Council procure an external operator for each energy centre as they are completed. This has been discounted as, individually, each energy centre is not large enough to obtain the economies of scale that are considered necessary to be able to offer competitive heat prices to

the consumers and certainly not on any basis that involves consistency between regeneration projects.

5. REASONS FOR RECOMMENDATIONS

- 5.1 LVHN HoldCo (with its wholly owned subsidiary operating company) Energetik is a Council-owned company that is being set-up to specialise in the operation and maintenance of a distributed heating networks with the aim of providing consumers with a competitive retail heat price, achieved through economies of scale, access to bulk purchase of fuel, access to competitive wholesale heat costs from the NLWA energy from waste plant and access to competitively priced funding. This will help achieve a key Council objective of reducing fuel poverty as well as reducing carbon emissions.
- 5.2 Entering into a contract with Energetik for all heat network facilities that we know will come forward as part of the estate regeneration programme and for heat network facilities that will come forward in the future will help both the Council and Energetik achieve economies of scale that would not be achieved by contracting for each energy centre separately.

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

6.1 Financial Implications

- 6.1.1 See financial implications in Part 2

6.2 Legal Implications

- 6.2.1 As previously reported to Cabinet, 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 LVHN scheme in the manner envisaged by the recommendations in this Report. In addition, section 111 of the Local Government Act 1972 gives a local authority power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions (such functions including its housing and related economic development functions) and section 111 of the Local Government Act 1976 gives local authorities the power to sell heat and electricity generated in association with heat. In addition to the Localism Act 2011, the Council has power under section 95 of the Local Government Act 2003 to trade in function related activities through a company. Section 1 of the Local Government Act 2003 permits the Council to borrow and to comply with the Prudential Code for Finance in Local Authorities. The recommendations detailed in this report are in accordance with these powers.

- 6.2.2 LVHN HoldCo is wholly owned by the Council, as an arm's length local authority controlled company, set up in accordance with the Companies Act 2006, and limited by shares. The company structure includes an operating subsidiary Energetik. The overall structure reflects similar local authority two-tier trading companies. It includes the setting of parameters around operating discretions.
- 6.2.3 It is intended that LVHN HoldCo (and its subsidiary Energetik) will operate as a commercial entity, charging customers a fair price for the retail supply of heat and, at the same time, making a return on investment. It will adopt, maintain and operate various heat network assets and provide heating & hot water to homes, businesses and public bodies. Pricing policy for domestic customers, in particular, will be subject to much closer Council scrutiny.
- 6.2.4 The drafting of the commercial arrangements being made between the Council and LVHN are well advanced. These arrangements will enable the Council to pass to Energetik responsibility for building (where appropriate), operating and maintaining heat networks on the Council's regeneration projects and/or to take over heat network assets built by the Council's chosen development partners in exchange for payment by Energetik of an adoption fee and any super-profits.. They will ensure that customers are given access to appropriate remedies in case of Energetik performance failings. In case of insolvency the Council may seek to step in or replace Energetik. Ultimately, all legal agreements will be in a form approved by the Assistant Director of Legal & Governance.
- 6.2.5 In the event of delay in settling the commercial arrangements between the Council and Energetik, the Council would not be in breach of any obligation owed to the developers appointed to deliver the regeneration schemes referred to in paragraph 3 of this Report. In this event, the Council would defer or never exercise its options to adopt the heat network assets, and the relevant Developers would retain responsibility. This would, however, make subsequent adoption (or the introduction of alternative operating arrangements) problematic.
- 6.2.7 As the sole shareholder in LVHN, and with restrictions on new share issues incorporated into LVHN HoldCo's and Energetik's constitution, the Council would need to approve any proposal to sell shares to any new owner/co-owner. Appropriate contractual protections would need to be drafted at the time but it would be quite possible to do so.
- 6.2.8 Overall, it should be possible to deliver the Council's objectives through LVHN HoldCo and Energetik including the delivery of heat at a competitive retail price.

6.3 Property Implications

6.3.1 The Councils Property Procedure Rules (the Rules) apply to all real property (property assets), whether freehold, leasehold or other property interests in which the Council has or proposes to have a legal interest and;

- Set out mandatory procedures regarding the acquisition, management and disposal of property assets
- Must be followed when transacting with another party using property in which the Council has an interest
- Commit the Council to a rigorous and business-like approach to the management of its property assets
- Ensure no property asset (or part) is occupied without appropriate legal documentation authorising the occupation

These Rules govern wholly property transactions and must be strictly followed.

Any other property interest, but not limited to wayleaves and rights of way set out in these rules, will require the approval of Strategic Property Services.

6.3.2 The proposed commercial arrangements and legal agreement between the LVHN (wholly owned by the Council and an arm's length local authority controlled company) and the Council could involve the transfer of heat network assets from the Councils property portfolio and may fall under this approval requirement.

6.3.3 In the event that the Council, as sole shareholder, considers selling shares to any new owner/co-owner there will be a requirement to obtain the advice of Strategic Property Services prior to any sale or issue of shares. Any change in part or full ownership of LVHN must have appropriate legal documentation taking into account any property implications.

6.3.4 If any heat network assets are to be transferred first to the Council it is imperative that any Corporate Landlord Responsibilities are addressed as far as is practical.

6.3.5 The transfer of heat network assets will be specifically recorded and documented within the legal agreement together with the provision to include additional heat network assets at a later stage if required.

7. KEY RISKS

7.1 The LVHN has developed a Risk and Mitigation Plan to cover the proposed heat network proposals and covers HRA projects. The plan was agreed at June 2015 Cabinet meeting.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

- 8.1.1 The estate regeneration programme contributes to this aim by tackling inequality and access to social housing by providing new homes.

8.2 Growth and Sustainability

- 8.2.1 The estate regeneration programme contributes to this priority by building strong and sustainable futures for our residents.

8.3 Strong Communities

- 8.3.1 The community plays a central role in driving forward change and regeneration in the local area to create a stronger community.

9. EQUALITIES IMPACT IMPLICATIONS

- 9.1 Equalities impact assessments are in place for the developments at Ladderswood (Montmorency Park), the Alma and New Avenue.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

- 10.1 This report does not recommend a change of service or implementation of new practices and therefore Performance Management Implications are not applicable.

11. PUBLIC HEALTH IMPLICATIONS

- 11.1 Climate change has been cited as the greatest public health threat in the 21st century. Increasing heat efficiency will help to mitigate this risk.

Background Papers

None