

MUNICIPAL YEAR 2016/2017 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

PORTFOLIO DECISION OF:

Cabinet Member for Housing and Housing Regeneration and Cabinet Member for Finance and Efficiency

REPORT OF:

Director – Regeneration & Environment

Agenda – Part: 1

KD Num: 4076

Subject: Electric Quarter –Acquisition of site known as The Plastics Factory

Wards: Ponders End

Cabinet Members consulted:

Councillor Ahmet Oykenler and Councillor Lemonides

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1. EXECUTIVE SUMMARY

- 1.1 On 17 June 2015 Cabinet (KD4076) resolved to make a Planning Compulsory Purchase Order (the **PCPO**) under section 226(1)(a) of the Town and Country Planning Act 1990 for the acquisition of land and new rights within the area described in the report and shown edged red on the plan attached to the Cabinet Report (the **Order Land**).
- 1.2 The same Cabinet meeting delegated authority to the Director of Regeneration and Environment, acting in consultation with the Director of Finance, Resources and Customer Services, to acquire all necessary interests in land within the area subject to the PCPO either by agreement or compulsorily.
- 1.3 Heads of Terms have been agreed between the London Borough of Enfield (the **Council**) and EPCO Holdings Ltd (EPCO) (the **Seller**) for the acquisition of their freehold interest at 230 High Street, Ponders End, Enfield, EN3 4EZ (the **Site**) on the basis of vacant possession.
- 1.4 The purpose of this report is to approve the acquisition of the Site on the basis of the agreed Heads of Terms, which are appended to Part 2 of this report.

2. RECOMMENDATIONS

- 2.1 To authorise the Authorised Legal Officer to acquire the freehold land interest held by EPCO Holdings, at 230 Ponders End High Street on the basis of agreed Heads of Terms.
- 2.2 To authorise the release of funds, identified for the regeneration of Ponders End High Street, to enable the acquisition to take place.

3. BACKGROUND

- 3.1 On 18th July 2012 Cabinet (KD 3525) authorised a budget from the Neighbourhood Regeneration Capital Programme and other finances to support the delivery of the Ponders End High Street Regeneration Scheme.
- 3.2 On 17 June 2015 Cabinet (KD4076) delegated authority to the Director of Regeneration and Environment, acting in consultation with the Director of Finance, Resources and Customer Services, to acquire all necessary interests in land within the area subject to the Electric Quarter PCPO (the Order Land) either by agreement or compulsorily.
- 3.3 On behalf of the Council, GVA, the Council's Property Advisors on acquisitions in the Order Land, have negotiated the purchase of 230 High Street by agreement. The details of the background and context for this purchase, details of the Site and purpose of this acquisition are explained in Part 1 of this report, together with Property and Legal Implications and Impact on Council Priorities. Part 2 of this report sets out the Heads of Terms upon which this acquisition is being made; provides details of the Red Book Valuation undertaken to acquire the Site; Due Diligence undertaken by the appointed solicitor, Bevan Brittan; the strategic importance of acquiring the Site; Key risks; and includes Financial Implications.
- 3.4 Given the strategic importance and cost of this acquisition, this report is seeking Portfolio approval to proceed with the acquisition on the terms as set out in Part 2 of this report.
- 3.5 The following sections explain the Agreement for Lease with the Developer Partner for this Scheme; document the Council's

progress to date with acquiring the land interests for the Electric Quarter scheme (see definition below at 3.7); provide an update on the PCPO, and set out the reasons for recommending the acquisition of the Site.

3.6 Developer Partner

- 3.6.1 On 24th April 2013, Cabinet (KD 3682) noted the results of the procurement exercise for a Delivery Partner for the Electric Quarter and approved the recommendation to select Lovell Partnership Limited as the Preferred Developer Partner (the **Developer Partner**). The same Cabinet delegated authority to the Director of Regeneration and the Director of Finance to enter into an Agreement for Lease, and then to grant a Lease (or two separate leases) to the Preferred Bidder following the satisfaction of the Conditions for the Agreement for Lease for the delivery of the Electric Quarter.
- 3.6.2 On 8th October 2014, the Council entered into an Agreement for Lease with the Developer Partner (see Cabinet Report 15th March 2016 (KD4261). Under the terms of the Agreement for Lease, the Developer Partner is tasked with securing a detailed planning application (amongst other conditions) and the Council is tasked with securing the land and property interests required for the Scheme (Condition B of the Agreement for Lease).
- 3.6.3 The Developer Partner submitted a planning application in October 2015 for a comprehensive redevelopment scheme in Ponders End called "the Electric Quarter Scheme" (the **Scheme**) which will provide 167 residential units and 1,379 sq m of commercial and community floor space. On 26th January 2016, the Developer Partner was granted planning permission subject to conditions including the completion of a Section 106 Agreement (**Conditional Planning Consent**).
- 3.6.4 The Agreement for Lease contemplates that either a single lease will be granted of the entire site or two separate leases will be granted, one of Phase A (which includes the remaining land formerly occupied by the Middlesex University) and the other of Phase B, which is the east half of the Scheme, including the land fronting Ponders End High Street. The Site is in Phase B.
- 3.6.5 The Site is being acquired to the specific purpose of being transferred (by the grant of a lease) to the appointed Developer Partner to deliver the Scheme in accordance with the terms of the Agreement for Lease.
- 3.6.6 Completion of the Lease of Phase B is conditional upon the Council securing all land and property interests within Phase B.

The acquisition of the Site therefore helps the Council to satisfy this condition under the Agreement for Lease.

3.7 Compulsory Purchase and Land Acquisition

3.7.1 On 18th July 2012, Cabinet (KD 3525) authorised the commencement of negotiations with freehold and leaseholder owners to acquire from them by agreement their land and property interests in the Ponders End Central Regeneration scheme area (that originally also included the former Middlesex University site).

3.7.2 The same Cabinet meeting gave authorisation to the Director of Finance to use prudential borrowing for the acquisition of necessary land and property in the Scheme.

3.7.3 The Council has been able to acquire a number of properties via private treaty negotiations:

- a) (Part of) The Former Middlesex University site
- b) 188 High Street
- c) 198 High Street
- d) 204-214 High Street (former Police Station), currently occupied by The Qube community space.

3.7.4 On 17 June 2015 Cabinet (KD4076) resolved to make a Compulsory Purchase Order under section 226(1)(a) of the Town and Country Planning Act 1990 for the acquisition of land and new rights within the area described in the report and shown edged red on the plan attached to the Cabinet Report.

3.7.5 The same Cabinet meeting delegated authority to the Director of Regeneration and Environment, acting in consultation with the Director of Finance, Resources and Customer Services, to acquire all necessary interests in land within the area subject to the PCPO either by agreement or compulsorily.

3.7.6 The Council has assembled a strong professional team to implement the PCPO and prepare for the Public Inquiry. This team consists of:

- a) GVA Property Consultants, who are providing property advice and are negotiating with the holders of land interests on behalf of the Council.
- b) Persona Associates Limited, who undertook the initial land referencing exercise.
- c) Bevan Brittan, who are providing legal advice and support throughout the Compulsory Purchase process. They are also undertaking the conveyancing for the acquisition of the Site on behalf of the Council,

d) Brian Ash QC, Leading Counsel for the Council at the Public Inquiry

3.7.7 Throughout the development of the Scheme the Council has undertaken extensive negotiations with all land interest holders on the Site. These were conducted by Urban Vision until April 2016 when their lead advisor retired. From May 2016 GVA have taken on this role.

3.7.8 In response to the making of the PCPO, we received eleven objections, and therefore the PCPO will proceed to Public Inquiry, for which a date and venue have now been set: 29th November to 2nd December 2016 in the Council Chamber at Civic Centre, Enfield. Brian Ash QC will be representing the interests of the Council at the Inquiry.

3.7.9 EPCO Holdings, with whom Heads of Terms have been agreed for acquisition were one of the said objectors. EPCO will withdraw its objection to the PCPO upon exchange of contracts (see Heads of Terms appended to Part 2 of this report).

3.8 Details of the Site

3.8.1 The buildings on the Site comprise two adjoining and intercommunicating factory units with an ancillary yard area and additional single storey offices.

3.8.2 The buildings house a company (the **Tenant**), Guy-Pro (UK) Limited, which produces and recycles plastic bags.

3.8.3 The Site has two access points either side of the Mosque, which leads to a concrete surfaced area in front of the industrial buildings.

3.8.4 The buildings are estimated to have been constructed in the 1960s, with a variety of recent additions, and are of poor quality industrial stock.

3.8.5 The Gross Internal Area covering all the floorspace in the Warehouse (north and south) and the office and storage areas has been measured at 12,272 sq ft.

3.8.6 The total site area is 0.413 acres.

3.8.7 The current use of the Site is Class B2 (General Industrial).

3.9 Heads of Terms

- 3.9.1 Heads of Terms have been agreed between the Council and the Seller for the acquisition of their freehold interest at 230 High Street, Ponders End, Enfield, EN3 4EZ.
- 3.9.2 The Sale Contract is being drafted by the Seller's solicitors in liaison with Bevan Brittan, acting on behalf of the Council.
- 3.9.3 The Heads of Terms include key conditions including that the Seller will withdraw their objection to the PCPO upon exchange of contracts, and that the Seller will deliver the Property with Vacant Possession upon Completion. Further details of the Heads of Terms are provided in Part 2 of this report.
- 3.9.4 The PCPO team is satisfied that the acquisition represents a good deal for the Council and that the Heads of Terms meet all requirements to support the Council's case in confirming the PCPO.

4. ALTERNATIVE OPTIONS CONSIDERED

Please see Part 2 of this Report

5. REASONS FOR RECOMMENDATIONS

- 5.1 The purpose of the proposed acquisition is to advance the acquisition of all freehold and leasehold interests within the Order Land, which is a condition of the Agreement for Lease with the Developer Partner of the Scheme.
- 5.2 Cabinet has given authorisation (KD 4076) to proceed with the Electric Quarter Scheme and to acquire all land interests within the Order Land either voluntarily or compulsorily.
- 5.3 When delivered, the Scheme will generate a range of benefits including: a new library with a High Street frontage, 167 residential units of which 30% will be affordable, 1,379 sq metres of commercial and community space, the introduction of new high quality public open space and improved connectivity in Ponders End centre, and a major catalytic project for the wider regeneration of Ponders End and North East Enfield at large.
- 5.4 The Scheme is in accordance with the North East Enfield Area Action Plan which prescribes comprehensive development for the Ponders End High Street area. The acquisition of the Site is a keystone part of the Scheme which will unlock the one of the major obstacles to delivery.

5.5 Please also see Part 2 of this report.

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

6.1 Financial Implications

Please see Part 2 of this report.

6.2 Legal Implications

6.2.1 The Council is authorised under s.120(1)(b) of the Local Government Act 1972 to acquire land by agreement for “the benefit, improvement or development of their area. There is also a general power under s.1 of the Localism Act 2011 for the Council to do anything which an individual may generally do.

6.2.2 The recommendations in this report are in accordance with the Council’s powers.

6.2.3 The proposed acquisition of property by the Council complies with the Property Procedure Rules.

6.2.4 The agreed heads of terms of the acquisition are in Part 2 to this report.

6.2.5 All documentation shall be in a form approved by the Assistant Director, Legal Services.

6.3 Property Implications

6.3.1 The Council have appointed external property consultants GVA Grimley Limited to provide property valuation and appraisal advice to the Assistant Director for Regeneration, Planning and Programmes for the Ponders End (Electric Quarter) scheme and negotiate Heads of Terms for the freehold acquisition of land and property known as “The Plastics Factory” and therefore Strategic Property Services role is limited to providing “overview” advice only.

6.3.2 The negotiated price for the property asset is stated within the report to be £1,000,000 together with additional payments for basic loss payments, solicitors and surveyors costs and potentially reinvestment costs should the seller chose to make a claim within the prescribed period. The formal valuation, however states the value to be £920,000. Despite the sale price exceeding the valuation, SPS understand that

GVA Grimley Limited believe this to be a reasonable figure given the necessity to secure the property for the wider scheme. The rationale is explained further in the report.

- 6.3.3 The valuation report states that remedial works are required in order to bring the property into "good and tenantable" condition. It is likely therefore to require further capital expenditure before a suitable "Meanwhile Use" occupier can be found. This additional expenditure should be adequately addressed within the overall budget and holding costs plan. Furthermore it is also noted that the accommodation itself is of poor quality (condition aside) and therefore it may be necessary to incur further expenditure on refurbishment, conversion or adaptation works prior to letting. A potentially significant rent free period is likely to be required for this purpose.
- 6.3.4 It is noted that there isn't a planning consent in place for the existing industrial use, and neither is a current Fire Risk Assessment in place and therefore the Council is purchasing the asset on this basis and accepting any residual risks of non-compliance.
- 6.3.5 Whilst SPS have not had sight of the title documents, it is assumed that the Council are receiving "good title" and are therefore able to implement the redevelopment scheme as intended without restrictions or covenants precluding or impeding delivery of the scheme or paying compensation following appropriation for planning purposes.
- 6.3.6 The acquisition of various property interests following land assembly will require ongoing estate management and therefore appropriate budgetary and professional expertise needs to be put in place following each acquisition. This is of particular importance in this case given that it forms part of Phase B.
- 6.3.7 It is recommended that close consideration should continue to be given to the impact that further land acquisition expenditure is having on the overall viability of the project and reported to Members as appropriate.
- 6.3.8 In summary, Property Services support the recommendations within this report subject to the issues highlighted in these Property Implications being fully taken into account.

7. KEY RISKS

Please see Part 2 of this report.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

The Regeneration of Ponders End High Street will promote fairness for all members of the local community through consulting the community on the proposals and by the planned provision of new commercial, community and residential development that is appropriately accessible to the local community. The Community Benefits Toolkit has already informed Tender Documentation, and accordance with its requirements was an evaluation criterion.

8.2 Growth and Sustainability

Growth and sustainability are central to the proposals for Ponders End High Street. The proposed development will provide growth in terms of increasing the supply of quality housing in the area; improving the quality and quantity of commercial space; and by including one or more community uses that will facilitate appropriate community activities.

8.3 Strong Communities

The proposals for Ponders End High Street aim to increase home ownership levels in the area which will create a more mixed community and support greater footfall along the High Street. The proposed redevelopment will also provide a range of unit sizes to accommodate a diversity of community and commercial uses, and improving the public realm will facilitate the free flow of people between the High Street, Park, and the former Middlesex University site. The Scheme will also provide sufficient space to accommodate the expansion of the local Mosque, which is very popular and at capacity.

9. EQUALITY IMPACT IMPLICATIONS

9.1 In accordance with the Contract Procedure Rules the Regeneration of Ponders End High Street has been subject to a Predictive Equality Impact Assessment in March 2012 and an Equalities Impact Assessment in October 2012 as part of the outline planning application. A revised Equalities Impact Assessment was submitted with the planning application.

9.2 Overall the Equalities Impact Assessment finds the proposed development will respond positively to securing a development that promotes equality.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The Regeneration of Ponders End High Street contributes towards the achievement of:

- Core Policy 41 of the Core Strategy
- North East Enfield Area Action Plan (adopted 8 June 2016)
- Ponders End Central Planning Brief
- Shaping Enfield's Future
- North East Enfield Preferred Options Report
- 5a of the Sustainable Community Strategy 2007-2017
- 2.10 "Improve the Quality of life for residents through the regeneration of the priority regeneration areas" of the Enfield Council Business Plan.

11. HEALTH AND SAFETY IMPLICATIONS

- 11.1 In relation to the possible purchase of land, it will be necessary, through the process of due diligence, to establish the extent of contaminated land and to ensure that appropriate measures are taken to mitigate risks and to ensure its likely suitability for projected end uses.
- 11.2 In the interim period acquisition and development, the Council will ensure that land will be properly managed in order to provide a satisfactory level of amenity, safety and security. The Council already own a significant property portfolio, and this parcel of land would be managed, secured and protected in the same way as the existing property ownership in Ponders End.

12. PUBLIC HEALTH IMPLICATIONS

- 12.1 The Health Impact Assessment prepared for the Outline Planning Application concluded that the development will have an overall beneficial effect on several determinants for health, in particular on employment and education (in terms of job training), which have been identified as priorities in the local area. The Health Impact Assessment will be revised and refreshed in light of the new site boundaries as part of the submission of the new planning application.
- 12.2 Furthermore, the development has the potential to benefit several vulnerable groups which have been identified in the area. These groups include the unemployed, young people and children in poverty, mainly through the education and training opportunities, but also through the re-provision of a more modern and attractive library.

Background Papers

No Background Paper

MUNICIPAL YEAR 2016/2017 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

PORTFOLIO DECISION OF:

Cllr Daniel Anderson
Cabinet Member for Environment

REPORT OF:

Director – Regeneration & Environment

Agenda – Part: 1

KD Num: 4383

Subject:

Amendments to the Domestic Waste and Recycling Quality Policy

Wards: All

Contact officer and telephone number: Peter Robinson 0208 3791884

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1. EXECUTIVE SUMMARY

- 1.1 The recycling quality policy (previously known as the contamination policy) is to ensure waste and recycling is properly segregated, suitably contained / controlled and to ensure compliance with the requirements of sections 45(a) and 46 of the Environmental Protection Act 1990 and to produce high quality recycling. The policy applies to dry recyclables, organic waste and residual waste.
- 1.2 The purpose of this report is to set out the proposed changes to the Council's existing policy on how it manages recycling quality and the issues specifically associated with dry recycling such as textiles, nappies, food waste and black bags collected from low-rise properties (also known as kerbside).
- 1.3 Dry recycling quality has recently become more of an issue because of the introduction of the new regulation regarding Material Recovery Facility(s) (MRF) which was brought into force in March 2014. The regulation requires a more rigorous testing of materials both going into and out of the MRF since October 2014, with the aim to improve the quality of recyclables. In addition, the Council is required under the revised Waste Regulations 2011 to ensure it facilitates and improves the recovery of recyclables collected, in other-words, it maximises the quality and quantity of dry recyclables collected.
- 1.4 Taking this into account along with the Council's newly commissioned MRF contract which commenced from the beginning of September 2015, a key aim of the policy change is to facilitate and improve quality of dry recyclables collected and reduce disposal and contractual costs by targeting persistent abusers of the dry recycling service.

2. RECOMMENDATIONS

- 2.1 To adopt the proposed amended recycling quality policy for kerbside properties as set out in Appendix 1 from approval of this report.
- 2.2 That the authority to implement the policy is delegated to the Assistant Director Public Realm.

3. BACKGROUND

- 3.1 Enfield currently provides a collection service to around 122,000 households per week, which includes estates. The majority of kerbside properties are provided with individual 140 litre wheeled bins for residual waste and 240 litre wheeled bins for dry recycling and organic waste, or bags where bins cannot be accommodated.
- 3.2 In 2015/16 Delegated Authority Report 15.61 approved a revised waste contamination policy. The policy applies to dry recyclables, organic waste and residual waste and is intended to ensure waste and recycling is properly segregated, suitably contained / controlled and is not contaminated. This ensures compliance with the requirements of the Environmental Protection Act 1990 and helps to produce high quality recycling.
- 3.3 Residual waste containers and those for the organic service rarely contain the wrong items, however on occasion rubble, bricks, soil or other inappropriate items are placed within the bins. This type of material can make the bin too heavy to empty or in the case of the organic service unsuitable for processing. Hazardous material will also classify the container as contaminated.
- 3.4 As these problems rarely occur a straight forward approach of not collecting the bin and marking it with the reasons why is generally sufficient to manage any problems that arise. This is detailed in sections 2 and 3 of Appendix 1.
- 3.5 In October 2014 amendments under the Environmental Permitting (England and Wales) Regulations, came into force relating to sampling and quality testing of Co-Mingled Dry Recycling delivered for processing. These Improved processes have revealed nationally significantly increased levels of non-recyclable material, than was previously thought to be the case:
- 3.6 This position has been mirrored in Enfield. Quality issues with dry recycling are increasing and impacting significantly on the contractual costs associated with processing this material once collected. Analysis undertaken in trial areas has shown that up to 23% of properties will persistently abuse the dry recycling service by placing items such as nappies, textiles, food waste and black bags of general waste in their blue recycling bins. Although the collection crews reject around 1,650 dry recycling containers every week out of the 89,000 collections made this is not impacting sufficiently on the problem.
- 3.7 Despite this work and communications and promotion work such as the LWARB funded work undertaken in 2014 to provide revised communications information such as bin stickers and static stickers the level of non-recyclable material contained within the dry recycling is increasing.

- 3.8 A sustained communication campaign is being undertaken that focusses on contamination issues borough wide. This is expected to provide quick wins from more engaged residents as the key requirements of the service are reinforced and common misconceptions and myths are dispelled. This borough-wide educational campaign will include new 'at a glance cards', underlid bin stickers, vehicle livery, posters, newspapers/our Enfield ads, landlord/management agent packs and crew packs.
- 3.9 Following this borough-wide marketing activity a more targeted communications campaign will be rolled out. This will segment our customer base geographically and demographically, identifying needs, behavioural issues and barriers to behavioural change relating to particular areas, communities and groups.
- 3.10 An educational communications and engagement campaign will then be developed and delivered with messages, material and activity being tailored according to the needs and behavioural issues of each individual audience. Every strand of this campaign will use a mix of traditional and digital communications and engagement channels – targeted to best reach the audience concerned.

4. PROPOSAL

- 4.1 In addition to the increased communication work outlined above there is a requirement to amend the current policy approach as although it does have a positive effect on reducing non recyclables, it is not sustainable as it would result in the removal of a significant number of recycling bins if it was used more widely.
- 4.2 The removal of significant numbers of recycling bins across the borough would have a detrimental impact on overall household recycling rates and also increase waste disposal costs. Removal of the recycling bins would also result in additional side waste being generated which would require considerable enforcement resource to resolve and noticeably reduce the quality of the street scene.
- 4.3 The policy approach is detailed in section four of the attached Appendix 1 but can be summarised as follows:

Stage	Action
1	Bin not emptied and warning letter sent
2	Bin not emptied and enforcement action

- 4.4 It is proposed to implement enforcement action at stage two of the policy to ensure residents use the recycling bins correctly rather than removing them and creating further street scene problems.

- 4.5 Analysis of the non-recyclable waste found in the recyclate has shown there are two broad types:
- Items similar to wanted recyclables – such as plastic bags or other plastic items, glass saucepans/Pyrex etc.
 - Items dissimilar to targeted recyclables such as nappies, food waste, textiles, black sacks and DIY type waste
- 4.6 It is proposed to use the enforcement option for properties placing dissimilar items in the bins as these are clearly not recyclable through the dry recycling service and the residents are either making no attempt to use the service correctly, or are deliberately misusing the service by concealing non-recyclable waste under good quality recyclables.
- 4.7 Where residents are trying to use the service correctly and putting in non-recyclable but similar items to those that can be recycled then additional education and engagement will be used. Residents who are trying to use the service correctly will not be targeted for enforcement action.
- 4.8 The enforcement approach will be to issue warning notices under section 46 of the Environmental Protection Act 1990 to identified properties followed by Fixed Penalty Notices of £80 if the problem reoccurs.
- 4.9 The Council's waste and communications information is currently being reviewed prior to a relaunch to ensure all residents are aware of the services available and how to use them.
- 4.10 It is recommended that the proposed changes are implemented upon approval and performance monitored to determine effectiveness of the policy.

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 "Do nothing" option was considered and rejected owing to the likely negative impacts on recycling performance and contract costs. Non-recyclables materials within the recycling stream are expected to increase recycling costs by approximately £250,000 per annum if nothing is done to manage this.

6. REASONS FOR RECOMMENDATIONS

- 6.1 The proposed policy changes focus on stream-lining the approach and using intelligence data gathered by the collection crews and recycling team to target resource on people who are abusing the recycling service.

- 6.2 The rationale for the increased communications approach is based on recent analysis of the waste that showed around a third of all dry recycling contamination is made-up of non-recyclable plastic, card etc. This indicates that a significant proportion of non-recyclable material is due to a lack of knowledge about what can and cannot be recycled.
- 6.3 The contamination rate for the recycling service varies but can be over 20% for some loads which is detrimental to the overall household recycling rates. It would also have noticeable cost implications linked to the new MRF contract and relating to disposing of recyclables which would be more expensive than recycling them.
- 6.4 The intention of implementing the revised policy is to reduce non-recyclable material within the recycling stream to under 10% and to sustain this level going forward.

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

7.1 Financial Implications

- 7.1.1 This report seeks amendments to the Domestic Waste and Recycling Quality Policy as stated in Appendix 1.
- 7.1.2 Quality issues with dry recycling are increasing and impacting significantly on the contractual costs associated with processing this material once collected. Analysis shows that the collection crews reject around 1,650 dry recycling containers every week out of the 89,000 collections made.
- 7.1.3 The proposed policy should contribute towards reducing the level of contamination identified at the Material Recovery Facility (MRF), which is resulting in budget pressures.
- 7.1.4 A key aim of the policy change is to facilitate and improve quality of dry recyclables collected and reduce disposal and contractual costs (paragraph 1.4). In June 2016 the projected 2016/17 over spend from the dry recycling/comingled contract was about £723k of which approximately £100k is due to disposal of non-target materials.
- 7.1.5 A sustained communication campaign is being undertaken that focusses on contamination issues borough wide "RE 16.012 - investment to fund an extensive communication campaign, and support to implement the contamination policy". This is expected to provide quick wins from more engaged residents.
- 7.1.6 Following this, more specific targeted communication will be used where specific problems are identified through poorly performing rounds.
- 7.1.7 And the enforcement approach will be to issue warning notices under section 46 of the Environmental Protection Act 1990 to identified properties followed by Fixed Penalty Notices of £80 if the problem

reoccurs (paragraph 4.8), any income from such penalties will be monitored/reported in the monthly budget monitoring returns.

7.2 Legal Implications

7.2.1 Section 111 of the Local Government Act 1972 ("LGA") 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 and the Localism Act 2011 provides the Council power to do anything that individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles. In addition, section 112 of the LGA permits the appointment of such officers that the Council deems necessary for the discharge of its functions. The proposals set out in this report are consistent with this power.

7.2.2 The Assistant Director Public Realm should satisfy himself or herself that the policy complements the Council's strategic objectives for waste management in the Borough and that it is in pursuit of the Council's statutory duties.

7.3 Property Implications

None

8 KEY RISKS

Potential adverse publicity surrounding use of the policy will be mitigated by ensuring use of FPNs is targeted to those households demonstrably and repeatedly placing items dissimilar to targeted recyclables such as nappies, food waste, textiles, black sacks and DIY type waste into recycling bins despite clear and appropriate communication not to do so.

9 IMPACT ON COUNCIL PRIORITIES

9.2 Fairness for All

The revised policy will affect all residents and has taken into account fairness for all during development.

9.3 Growth and Sustainability

9.3.1 The policy will promote increased recycling and reduced residual waste and will therefore be aligned to sustainable waste management practices and sustainability practices in general.

9.4 Strong Communities

None

10 EQUALITY IMPACT IMPLICATIONS

It is deemed that an equalities impact assessment is not relevant or proportionate for the development of this revised contamination policy. However, this will be monitored and reviewed as part of the internal review processes.

11 PERFORMANCE MANAGEMENT IMPLICATIONS

Quality of recyclate collected from individual rounds is currently monitored and will continue to ensure the efficacy of the revised policy

12 HEALTH AND SAFETY IMPLICATIONS

None

13. PUBLIC HEALTH IMPLICATIONS

Climate change has been described as the public health threat of the 21st century. This should help mitigate some of the factors leading to climate change.

Background Papers

None

Waste and Recycling Quality Policy - Low-Rise Properties

1. Introduction

- 1.1. The purpose of this policy is to ensure waste and recycling is properly segregated, and contained and does not contain incorrect materials to ensure compliance with the requirements of sections 45(a) and 46 of the Environmental Protection Act 1990 ("the 1990 Act") and to produce high quality recycling.
- 1.2. This policy is supplemental to the London Borough of Enfield Waste Receptacle Regulations 2015.
- 1.3. Residents are required to comply with the following requirements:

2. Residual Waste

- 2.1. The residual containment as agreed by Enfield London Borough Council ("the Council") should only be used for those general household items that cannot be recycled using the Council's kerbside recycling services or the Re-use and Recycling Centre and any other agreed recycling provision provided by the Council.
- 2.2. Hazardous clinical waste, rubble, bricks and soil will also not be collected within residual waste containers. Hazardous waste must be collected using the hazardous waste collection and disposal service.
- 2.3. The Council's website provides information about what can and cannot be disposed of as residual waste.
- 2.4. If any residual waste container is found at the point of collection to contain incorrect materials the waste operatives will not collect the container and it will be left at the kerbside with a sticker or other clear information identifying why the container has been left. This information will be recorded by the operatives with details of the materials.
- 2.5. If the container is left because of incorrect materials the resident may:
 - Remove the incorrect materials and re-present the container on the next due collection day; or
 - Make arrangements themselves for the proper and legal disposal of the waste.
- 2.6. With particular cases, such as hazardous clinical waste being deposited in the residual container, Council officers shall write to the household stating what the problem is and how the material should be disposed of.

3. Food and Garden Recycling Service (also referred to as Organic Service)

- 3.1. The organic containment as described by the Council shall only contain food and garden materials. It shall not contain any non-recyclable material or any dry recyclables. Those materials suitable for recycling can be found in the Council's recycling communication materials such as leaflets and the Council website.

3.2. If any organic waste container is found at the point of collection to contain incorrect materials the waste operatives will not collect the container and it will be left at the kerbside with a sticker or other clear information identifying why the container has been left. This information will be recorded by the operatives with details of the materials.

3.3. If the container is left the resident may:

- Remove the incorrect materials and re-present the container on the next due collection day; or
- Make arrangements themselves for the proper and legal disposal of the waste.

4. Dry Recycling Service

4.1. The dry recycling containment as described by the Council shall only contain dry recyclables. It shall not contain any garden waste, food or non-recyclable material such as nappies, hazardous waste, hard plastic toys or any other materials that are not accepted as recyclable. Those materials suitable for recycling can be found in the Council's recycling communication materials such as leaflets and the Council's website.

4.2. Wherever a recycling container is found at the point of collection to contain incorrect materials the recycling operatives will not collect the container and it will be left at the kerbside with a sticker or other clear information identifying why the container has been left. This information will be recorded by the operatives with details of the incorrect materials.

4.3. If the container is left the resident may:

- Remove the incorrect materials and re-present the container on the next due collection day; or
- Make arrangements themselves for the proper and legal disposal of the waste.

5. Enforcement action

5.1 If waste of any kind is put in the incorrect receptacles, the Council may take the following steps in accordance with the 1990 Act (as amended) and any subsequent regulations:

5.2 The Council has identified some waste incorrectly placed in waste receptacles which is similar to the authorised waste whilst some is dissimilar. For example, in relation to dry recycling similar items include plastic bags or other plastic items and glass other than jars and bottles. Dissimilar items include nappies, food waste, textiles and bags of general waste.

5.3 The Council's primary focus is on those who place dissimilar items in waste receptacles. Accordingly the Council will only seek a FPN against those households who have been placing dissimilar items in waste receptacles.

Stage 1:

- 5.4 If a recycling container is found at the point of collection to contain incorrect materials, the occupier of the property will be issued with a written warning under Sections 46 – 46D of the 1990 Act if the Council considers that it has caused or is likely to cause a nuisance or has been or was likely to be detrimental to any amenities of the locality. The notice will be provided in accordance with section 46 – 46D of the 1990 Act and will include details of the nature of the failure to comply and how the failure to comply has caused or is likely to cause a nuisance or has been or was likely to be detrimental to any amenities of the locality. Failure to comply with a written warning may lead to a fixed penalty notice (“FPN”) being issued.
- 5.5 If the failure to comply is continuous then the warning letter will specify a date for compliance. Failure to comply within the compliance period may lead to the issue of a Notice of Intent. This notice will inform the occupier that the Council intends to take enforcement action. An individual will have 28 days to make representations to the Council if they disagree with the reasons for its issue.

Stage 2:

- 5.6 If a container is found a second time within a year at the point of collection to contain incorrect materials, a written warning will be given. The type of incorrect materials being put in the container may be considered by the Council when considering whether to issue a Notice of Intent.
- 5.7 If the Council decides to seek a FPN then a Notice of Intent will be served on the occupier, if the occupier has been issued a written warning for the same or similar offence within the last 12 months. The Notice of Intent will inform the occupier that the Council intends to take enforcement action and issue a FPN for the breach.
- 5.8 The occupier has 28 days from the Service of the Notice of Intent to make representations to the Council against the Notice of Intent. After the 28 days, if no representations are received or if representations are rejected a Final Notice is issued.
- 5.9 Once a Final Notice is issued a FPN is payable by the occupier within 28 days of service of the Final Notice. Alternatively the occupier can appeal.
- 5.10 A right of appeal exists to the First-Tier Tribunal. The First –Tier Tribunal will either confirm that the FPN is payable or reject it. From the date of the ruling the occupier has 28 days to pay. Further appeal may then be possible, for example to the High Court.
- 5.11 The current FPN for placing incorrect materials in waste receptacles is £80. This amount may be varied by the Council from time to time.
- 5.12 On the third and each subsequent occasion a container is found with incorrect items then a written warning will be given to the occupier. A Notice of Intent may be served on the occupier if the occupier has received a warning notice from the Council within the last 12

months for the same or similar offences. Following this the process in sections 5.4 to 5.11 above will be followed.

6 Implementation

- 6.1 This policy requires significant resource to implement and it is not possible or proportionate to implement it across the entire borough permanently.
- 6.2 The policy will therefore be applied where and when specific problems with incorrect waste being placed in waste receptacles are identified. This may be at ward, round, street or individual property level.
- 6.3 Enforcement policy stages 1 and 2 (sections 5.4 -5.12 above) will usually be implemented over a six week period although this may be extended or reduced as appropriate
- 6.4 The Council has discretion to pause or stop the policy at any point, where it is considered reasonable to do so.
- 6.5 Prior to the implementation of stage 1 the Council may undertake specific monitoring at ward, round, street or individual property level to determine if specific problems exist and it is appropriate to implement the policy. This may include detailed inspection of the waste presented for collection along with issuing of communications setting out what can and cannot be placed in the waste receptacles provided by the Council.
- 6.6 The Council has discretion to remove recycling containers and organic material containers where issue of FPNs is ineffective or inappropriate.
- 6.7 Failure to pay a FPN may result in further FPNs being applied and action being taken in court to recover fixed penalties as a civil debt.
- 6.8 In the event of any conflict between this policy and the provisions of the Environmental Protection Act 1990 (as amended) and subsequent regulations, the provisions of the Environmental Protection Act 1990 (as amended) and subsequent regulations will take precedence.
- 6.9 In the event of any conflict between this policy and the provisions of the London Borough of Enfield Waste Receptacle Regulations 2015, the London Borough of Enfield Waste Receptacle Regulations 2015 will take precedence.
- 6.10 The decision to implement the policy will be taken by the Assistant Director Public Realm.

7 Monitoring and Review

- 7.1 This policy will be reviewed periodically to ensure it remains effective.

MUNICIPAL YEAR 2015/2016 REPORT NO.

PART 1

REPORT OF:

Director of Finance,
Resources and
Customer Services

Contact officer and telephone number:

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Agenda – Part: One

Item: KD4396

Subject: Confirmation of the extension of Ernst & Young for the supply of services to support the delivery, transformation and leadership of a council wide procurement and commissioning hub

Cabinet Member consulted: Cllr. Lemonides

1. EXECUTIVE SUMMARY

- 1.1 On 1st February 2016, as part of the agreed Enfield 2017 Programme, staff from across the Council were consolidated into a procurement, commissioning and market management hub prior to the award of a long-term procurement and commissioning co-source contract.
- 1.2 Prior to undertaking the full tender process for a long term co-management partner, Cabinet, on 18th November 2015 agreed a proposal to award an interim contract ("Interim Contract") for the interim leadership of this Council-wide hub, until at least the 31st March 2016 (with the option of a three-month extension) and delegated this award, to the Cabinet Member for Finance and Efficiency and the Director of Finance, Resources & Customer Services.
- 1.3 Following a procurement exercise under the Consultancy One Framework ("Framework"), Ernst & Young ("EY") was confirmed as the successful tenderer and was awarded the Interim Contract for a period from 1st December 2015 – 31st March 2016 (inclusive).
- 1.4 The option to extend the Interim Contract from 1st April 2016 - 30th June 2016 (inclusive) was exercised by the parties in line with the tender and contractual documentation and this was further extended, 3 times during the period of 1st July – 11th November 2016 (inclusive) in order to maintain continuity of service to the Council, whilst the ongoing full procurement process to secure a procurement and commissioning hub co-manager, ensues.
- 1.5 The Council has undertaken a 'competitive procedure with negotiation' in order to secure the long-term co-manager. The Council has selected a preferred bidder but owing to the nature of the procurement process, a definitive agreement and a mobilisation date is still in negotiation and the length of negotiations is to a large extent, dependent on the positions taken, by the parties.
- 1.6 This report seeks authority to further extend the Interim Contract, with EY in order to maintain continuity of service during the transition period to full mobilisation of the long term contract. The further extension shall run from 12th November 2016 to 2nd January 2017 (inclusive).

2. RECOMMENDATIONS

- 2.1 Note the Council's intention to further extend the existing Interim Contract with EY from 12th November 2016 – 2nd January 2017 inclusive and approve the same.
- 2.2 Note that the value of the further extension of the Interim Contract and its construction is commercially sensitive until completion of the long term co-source arrangement, approved by Cabinet on 18th November 2015.
- 2.3 See Part 2 of this Report.

3. BACKGROUND

- 3.1 As part of the Enfield 2017 ("E2017") transformation programme, the Council decided to engage external expertise and capacity to work with us to develop and deliver the procurement and commissioning hub as an expansion of the successful use of a similar approach on a pilot basis within the HHASC Brokerage function.
- 3.2 EY currently leads the Council's "Procurement, Commissioning and Contract Management Hub" under a contract awarded in December 2015. The current extension runs from 31st October – 11th November 2016 (see paragraph 3.9 of Part 2 Report for further information).
- 3.3 The E2017 Programme Team is supporting the creation of this hub in line with the E2017 principles. This hub comprises staff from across the Council and is responsible for all procurement and commissioning activity across the Council, including the delivery of a market management function that ensures that the Council's future needs across a range of services such as temporary accommodation and domiciliary care, can be delivered in a sustainable manner.
- 3.4 The Council has been working with EY to identify and target the delivery of in-year savings across all areas of procurement and commissioning, building on their successful work delivered as part of the Adult Social Care Efficiency Programme. The existing Interim Contract expanded that activity across all areas of the Council, which will continue under this extension.
- 3.5 To select a preferred bidder, a mini-tender was undertaken using the Consultancy One Framework ("Framework"). The tender specifically identified the requirement to provide interim leadership of a single centralised procurement and commissioning team and the identification and delivery of in year savings across the Council.
- 3.6 The role identifying and delivering in year savings from across the Council's existing procurement and commissioning spend and other areas.
- 3.7 Following the mini-tendering exercise under the Framework, the winning tender was that submitted by EY. The Interim Contract awarded was for the period from 1st December 2015 – 31st March 2016 (inclusive), with the option to extend for a 3-month period. The Council subsequently enacted this three-month extension having satisfied itself that EY had fully performed the role required of them in line with the initial contractual requirements.

- 3.8 Further extensions were negotiated to run through the period 1st July 2016 – 11th November 2016, in order to maintain continuity of service and hub support while the full tender exercise ensues.
- 3.9 The Council requires an extension from 12th November 2016 – 2nd January 2017 (inclusive) in order for the preferred bidder of the long term contract and the Council to agree final terms and a mobilisation plan in accordance with the “competitive procedure with negotiation” process.
- 3.10 The scope of services included in this further extension will be the same as that under the original extension (and subsequent extensions).

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 An option considered was to not further extend the current Interim Contract and support the hub entirely in-house up to the mobilisation of the long-term co-management contract. However, given that this would remove the external support and leadership of the procurement and commission function that Cabinet have agreed should be in place, this was not appropriate, neither would it offer continuity to staff in terms of line management and professional support.
- 4.2 The option to move to a full tender is near completion and the Council has identified a preferred bidder in pursuit of a long term co-management partner of the service. However, the mobilisation of the long term co-managed contract will not be complete before the current Interim Contract extension expiry of 11th November 2016, and so is not available to the Council at this time.
- 4.3 The other option considered was to make a direct award to another external provider. However, this would not be in line with the Council’s standing orders or contract regulations and would not meet legal requirements and so has been discounted.

5. REASONS FOR RECOMMENDATIONS

- 5.1 Cabinet confirmed that that it would be beneficial for all procurement and commissioning staff from across the council to have worked alongside a delivery partner and to have benefited from the associated skills transfer within such an arrangement, before any recruitment and selection process to posts within the new hub is undertaken. It is important from both a staff development perspective, and the need for consistent high quality procurement advice to be available to support the council, not least in the procurement of contracts that related to statutory safeguarding duties, that this arrangement is continued until a long term contractual award is made.

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

6.1 Financial Implications

- 6.1.1 Please refer to Part 2

6.2 Legal Implications

- 6.2.1 Section 111 of the Local Government Act 1972 (“LGA”) 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 and the Localism Act 2011 provides the Council power to do anything that individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles.
- 6.2.2 The Council also has a general power of competence in section 1(1) of the Localism Act 2011. This states that a local authority has the power to do anything that individuals generally may do provided it is not prohibited by legislation.
- 6.2.3 In addition, section 112 of the LGA permits the appointment of such officers that the Council deems necessary for the discharge of its functions. The proposals set out in this report are consistent with this power.
- 6.2.4 The Council procured the Interim Contract through a “further competition” process in accordance with the Framework terms, with assistance from the Council’s Corporate Procurement Team. The Framework required the resulting call-off contract to be based on the Framework terms and the Council, at the time of all former extensions, was advised to ensure that those respective extension agreements, were based on the same. The Council has been advised that: (i) the scope of the services to be provided under this proposed further extension should be the same as those encompassed within the original scope of the call-off contract; and (ii) the validity of all former extensions will depend on the Interim Contract having been properly procured through and in accordance with the terms of the Framework.
- 6.2.5 As this further extension was not included in the original tender documentation or procurement, it is possible that it could be successfully challenged on the basis that the Public Contract Regulations 2015 have not been complied with. Should such a challenge be brought, the Council *could* raise a possible defence pursuant to Regulation 72(1)(e). The Council has been advised on the risk of a challenge being successful and, in assessing such risk, the Council may also consider the likelihood of such a challenge being brought in the context of the full, open procurement of the services.
- 6.2.6 There is no defined “cut off” point at which the additional extension begins to breach the public procurement regime. However, the shorter the period of the additional extension then, all other factors being equal, the lower the risk is likely to be. The Council should take this into account when seeking to deliver the long term procurement of these services in a manner which is as expeditious as possible, consistent with the aims and objectives of the Council for that new procurement.
- 6.2.7 All legal agreements (and applicable ancillary documentation) must be in a form approved by the Assistant Director of Legal & Governance Services. It is not anticipated that the further extension will require materially revised contractual documentation, but merely an acknowledgement by the parties of the extension of the current arrangements on their existing terms.

6.2.8 The Council shall ensure that its Constitution and in particular, its Contract Procedure Rules are complied with.

6.3 Property Implications

Not applicable.

6.4 Procurement Implications

The risk of possible challenge has been minimised as:

- the Interim Contract was procured by undertaking a 'further competition' under the Crown Commercial Services Consultancy One Framework Agreement;
- the extension agreement will be based on the Framework Agreement terms and conditions;
- the scope of the service provided under the extension agreement will remain unchanged; and
- the Council has reached preferred bidder stage in the procurement process..

7. KEY RISKS

7.1 The risk associated with non-award of this extension would be the failure to comply fully with safeguarding requirements relating to adult social care contracting.

7.2 The risk that the contract will not achieve savings greater than its cost is mitigated by the inclusion of a risk and reward element that directly reduces the cost that would have otherwise applied to the leadership of the procurement and commissioning hub.

7.3 Staff would not have consistent leadership and development in the period up to the future restructure of Procurement, Commissioning and market management hub and would therefore be potentially disadvantaged in any future recruitment process.

7.4 The risk of a procurement challenge to this proposed further extension.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

The creation of a procurement and commissioning hub will support all services across the council, enabling them to deliver front line services to the community.

8.2 Growth and Sustainability

The creation of a procurement and commissioning hub will support transparent procurement and commissioning activity through the sustainable procurement policy promoting the use of lots and local suppliers and SME's.

8.3 Strong Communities

The creation of a procurement and commissioning hub will support all services across the council, enabling them to deliver front line services to the community.

9. EQUALITIES IMPACT IMPLICATIONS

- 9.1 Support for vulnerable groups is enhanced by this contract extension as it will maintain a breadth of experience that can be brought to bear on contract negotiations for service.
- 9.2 All staff impacted by these proposals will be treated equally and in line with the E2017 People Principles that have been agreed by Cabinet and the Trade Unions.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

- 10.1 As with all aspects of E2017, progress and performance will be monitored by STB, whilst financial savings will be confirmed by the Assistant Director Finance and Business Support.

11. HEALTH AND SAFETY IMPLICATIONS

- 11.1 Not directly applicable.

12. HR IMPLICATIONS

- 12.1 All staff implications will be addressed via E2017 in the manner agreed by Cabinet and form part of the fortnightly discussions held with the Trade Unions.

13. PUBLIC HEALTH IMPLICATIONS

- 13.1 Improved contracting for Public Health outcomes will increase value for money across a wide range of service and embed public health as part of core business.