

MUNICIPAL YEAR 2018/2019 REPORT NO. 126

MEETING TITLE AND DATE:

Cabinet: 12/12/2018

REPORT OF:

Director of Law and
Governance

Contact officer and telephone number:

Shaun Rogan 0208 379 3836

E mail: shaun.rogan@enfield.gov.uk

Agenda – Part: 1

Item: 9

**Subject: Invitation to sign up to the UNITE
Construction Charter**

Wards: ALL

Cabinet Member consulted: Cllr M Maguire

1. EXECUTIVE SUMMARY

1.1 Enfield Council has been invited to sign up to the Unite Construction Charter for local authorities.

1.2 The Charter commits local authorities to working with Unite to achieve the highest standards in respect of: direct employment status, health & safety, standards of work, apprenticeship training and the implementation of appropriate nationally agreed terms and conditions of employment.

1.3 The Charter will cover important future local authority construction projects and has already been formally adopted by local authorities such as Liverpool, Newcastle, Bristol, Plymouth and Sheffield.

2. RECOMMENDATIONS

2.1 Cabinet considers the report for decision

2.2. Agrees the recommendation to sign up to the Charter for application to future relevant works subject to the appropriate supporting compliance and supporting actions being taken by the local authority.

3. BACKGROUND

- 3.1 Enfield Council has been invited to sign up to the UNITE Construction Charter for local authorities.
- 3.2 The Charter commits the local authority to working with UNITE to achieve the highest standards in respect of; direct employment status, health & safety, standards of work, apprenticeship training and the implementation of appropriate nationally agreed terms and conditions of employment.
- 3.3 The UNITE Union has members across many sectors of the economy, and following its merger with the Union of Construction, Allied Trades and Technicians in January 2017, now represents a significant number of its members in the construction industry.
- 3.4 The Charter will cover important local authority construction projects and has already been formally adopted by local authorities such as Liverpool, Newcastle, Bristol, Plymouth and Sheffield. These local authorities felt that it was important to acknowledge the importance of the Charter in emphasising their commitment to fairness and transparency. The proposal to sign up to the Charter reflects and is consistent with our new Corporate Plan, supporting our ambitions to create a lifetime of opportunities in Enfield and enable us to deliver the programmes that can provide good homes in well-connected neighbourhoods, sustain strong and healthy communities and build our local economy to create a thriving place.

Charter content

- 3.5 The UNITE Construction Charter, as attached at Appendix 1, covers 11 requirements for construction contractors and their supply chain.

Review of implications of sign up to the Charter

- 3.6 The details of the Charter have been shared with senior officers from relevant departments who have contributed to the implications set out later in the report. In summary on main areas of interest the feedback received asks that if signing up to the Charter that relevant operational, reporting and risk management measures will need to be put in place. The question of enforcement was also raised by several respondents and mitigating measures to address this will need to be developed and adopted to ensure compliance.
- 3.7 The Charter has reviewed by the Council's Corporate Maintenance & Construction Team, Property and Economy Directorate and Corporate Procurement Team. They have jointly advised that there are commercial and policy/administrative considerations that the local

authority would need to manage if agreeing to participate in the Charter and that these would be picked up in a comprehensive risk register with controls that would be finalised if the decision is taken to participate.

- 3.8 The implications above are some of the primary impacts highlighted to assist with decision making. Further details on recommendations to ensure successful compliance to the proposal are contained in the relevant implications section of this report.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The alternative options on this occasion that have been considered include: 1. Not recommending sign off to the Charter. This was rejected on the grounds that the Charter could bring some helpful benefits to the local authority and to Enfield. 2. Creating our own construction charter that could override and/or enhance existing workplace safety and workplace rights measures we already have in place. This second option was deemed unnecessary given the option to sign up to the Charter as presented by the UNITE Union as many other local authorities have opted to do.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The Charter aims are compatible with those of the local authority and recommendations are made to Cabinet to seek approval to proceed with arrangements to participate in and sign-off the Unite Construction Charter. This is consistent with the decision-making protocols within the local authority.
- 5.2 Cabinet is asked to approve the sign-up to the Charter with the assurance that provision is made by the organisation for any relevant risks to be effectively managed and communications plans executed.

6. COMMENTS OF OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 Finance and Corporate Procurement have reviewed the Charter and are supportive. They have advised that steps be taken to ensure the local authority is able to deliver against the Charter without impacting on programme delivery.
- 6.1.2 If agreeing to participate, identified controls will be put in place to ensure any additional contract management requirement by the local authority is met from existing resources wherever possible. Appropriate levels of monitoring and reporting considered necessary to ensure compliance with the charter will be agreed. Corporate Procurement will liaise with Property colleagues to produce options that can permit participation - i.e. standard contract clauses or adaptations to

tendering documents, regular checks or spot checks for relevant commitments.

6.1.3 It is recommended that if the Council is happy to support the Charter, it is applied to all new contracts only.

6.1.4 If in agreement, all efforts will be made to ensure that no unintended consequences of signing this Charter arise. Where necessary, mitigating measures will be taken that can encourage small, local businesses and sub-contractors to participate in bidding for future Council contracts. It will include providing guidance and assistance on any stipulations adopted that are requiring all employees to be directly employed on a PAYE basis to avoid disincentives to bid and advise on any additional burdens. If agreeing to participate, appropriate communications will be deployed to reach out to our local businesses and contractors to support them in adapting to these new conditions and requirements. The Council will also need to be able to either explain the different requirements in payment of wages for Construction contracts, or align other services with these standards.

6.2 Legal Implications

6.2.1 The Council has power under s.111 Local Government Act 1972 to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.

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 It has been confirmed that the Charter is consistent with the Council's current Equalities Policies. However, what should be noted is that for the Council to ensure compliance Public Contracts Regulations 2015 there is a need to ensure that the implementation of the principles in the Charter do not breach the Council's obligations to abide by the principles of non-discrimination, equal treatment and transparency when conducting procurements.

6.2.4 What should also be noted is that where the Council accesses Framework Agreements for some construction related projects, the requirement to comply with the Charter cannot be enforced as the Frameworks carry their own sets of terms and conditions, not open to amendments.

6.2.5 All legal agreements arising from the matters described in this Report must be approved by the Director of Law & Governance in advance of contract commencement.

6.3 Property Implications

None identified

7. KEY RISKS

7.1 The sign-up to the Charter would require monitoring of key risks to ensure compliance and provide evidence of the impact of participation.

7.2 If agreed, a comprehensive risk register with controls would be compiled that would ensure mitigating actions were available. This would include ensuring all contractual and procurement documentation was compliant and that monitoring was put in place and allocated within the organisation to manage contracts in future that could evidence the Charter. Furthermore, that no unintended outcomes were generated in terms of decreased competition or delays and that the offer in future agreements was clear to those wishing to partner with the local authority with support being made available to smaller local businesses who may need assistance.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Good homes in well-connected neighbourhoods

8.1.1 The Charter underpins our ambitions to bring quality and the highest standards to all our housing and regeneration activity. The further confirmation of worker's rights and welfare standards is consistent with our own stated ambitions as contained in our new Corporate Plan.

8.2 Sustain strong and healthy communities

8.2.1 The Charter makes clear its commitment to employee welfare and workplace rights. In doing so it reinforces our own commitment to ensure we work with delivery partners to ensure health considerations are built into all future capital works.

8.3 Build our local economy to create a thriving place

8.3.1 If correctly prescribed, the adoption of the Charter would signal our commitment to make good growth in the borough a key facet of future delivery and would contribute to ensuring that local people could benefit from more robust employment rights protection as part of future opportunities that will arise. It directly supports our guiding principle to 'value the workforce across the borough and enable them to deliver services effectively and efficiently.

9. EQUALITIES IMPACT IMPLICATIONS

- 9.1 The Charter is consistent with the Council's current Equalities Policy. A retrospective Equalities Impact Performance assessment would be undertaken in 2020 should the Charter be approved to go forward for sign-off. This will utilise impact data gathered in the first year of operation.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

- 10.1 Officers in corporate performance management and information management functions will work with colleagues across the local authority to develop an approach to best capture relevant data and create a reporting method to provide verification should the Charter be supported to sign off. Arrangements will be made for annual reporting to be made to EMT.

11. HEALTH AND SAFETY IMPLICATIONS

- 11.1 The Charter includes a focus on health and safety of workers (particularly noting paragraphs 2 and 3). This is compatible with the Council's approach to ensuring worker safety.

12. HR IMPLICATIONS

- 12.1 As the implications of this Charter relate to external construction partners there are no HR implications for the Council. However, the Council is happy to work with external partners to share best practise. The Council works with Unite Union as one of the Council's recognised trade unions.

13. PUBLIC HEALTH IMPLICATIONS

- 13.1 As the Charter has a significant focus on workforce welfare and the reaffirmation of employment rights, sign up would be consistent with our ambition for a healthy Enfield.

Background Papers

The Charter document is attached at Appendix A.

Appendix A

CONSTRUCTION CHARTER

As a Local Authority we are responsible for the procurement of a multitude of construction projects. It is therefore appropriate that we as a responsible client enter into this agreement and commit to working with the appropriate trade unions, to achieve the highest standards in respect of; direct employment status, health & safety, standard of work, apprenticeship training and the implementation of appropriate nationally agreed terms and conditions of employment. The following shall be a requirement for all contractors and their supply chain engaged by this Authority: -

1. All parties recognise that the highest level of compliance with current HMRC regulations must be achieved where public funds are utilised. It is therefore a contractual requirement that all operatives are directly employed on a PAYE basis under a contract of employment. Furthermore the use of intermediary payroll or umbrella companies will be prohibited on all contracts.
2. Health and safety of workers on all of our construction projects is paramount. It is therefore a requirement that all contractors rigorously implement and adhere to our minimum standards for health and safety, as set out in our procurement documents. In addition, we require all contractors to provide quality welfare facilities fit for purpose in accordance with the Construction Design and Management Regulation of 2015.
3. It is a recognised fact that the presence of trade union safety representatives significantly improves safety in the workplace. Contractors and their supply chain are required to work collaboratively with the appropriate trade unions to identify and implement reasonable real-world initiatives.
4. The Authority requires all projects to be completed to the highest standard, so as to meet the aspirations of the residents of this Authority. In order to achieve this, it is recognised that it is necessary that all workers are competent and have the appropriate level of skill to carry out the work they are employed to do. To assist in the achievement of this goal the Authority's contractors and their supply chain will ensure they retain documented evidence that all workers are competent to carry out the work they have been employed to do. They will ensure that such evidence is retained in a way as to allow the Authority or its nominees to audit the documentation. Possession of the recognised industry skills / grade card such as JIB or CSCS will be considered acceptable evidence

5. The Authority is mindful of the industry skills shortage and the need to address this through appropriate apprenticeships, including adult training in up skilling. The Authority's contractors and supply chain will in consultation with the Authority and other interested parties develop and implement a programme that addresses the skills shortage and provides training opportunities to local residents.
6. The Authority recognises the right of all construction workers to be employed under and to be protected by the appropriate national industry collective agreement. The Authority requires full compliance with all appropriate national agreements applicable to the construction industry.
7. All contractors and their supply chain will accept the right of any trade union that is a signatory to an appropriate national agreement, to appoint shop stewards, workplace health & safety representatives and Union Learning Reps. All trade union accredited representatives will be granted appropriate time and facilities to carry out their responsibilities.
8. The Authority, its contractors and their supply chain are committed to a fair and transparent recruitment policy. All contractors and their supply chain will actively ensure that the engagement of labour is based on the individual's ability to meet the needs of the project and the specific tasks for which they are recruited to undertake.
9. The Authority its contractors and their supply chain agree it's not acceptable for anyone to use or make reference to any form of blacklist.
10. The Authority recognises the benefit trade unions bring to the workplace and the rights of workers to hear from trade union representative. The Authority's contractors and their supply chain are required to allow access to nominated trade union officer from trade unions that are signatories to the appropriate national agreements. Access shall mean access to welfare facilities during working times so as to allow them to consult with their members and potential members.
11. The Authority supports the Get Britain Building campaign, which is aimed at supporting and sustaining the British construction industry. Consequently, all relevant construction contracts will be required to comply with our Authority's Sustainable Buying Standard for Highways and Construction Materials, which requires structural steel and other relevant materials to be covered by BES 6001 Responsible Sourcing of Construction Product certification, or equivalent.