

MUNICIPAL YEAR 2019/2020 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

OPERATIONAL DECISION OF:
Executive Director
Place

Agenda – Part: 1	KD Num: 4875
Subject: Montagu Industrial Estate Redevelopment – Joint Venture Agreement Amendment and Indemnity Agreement	
Wards: Edmonton Green	

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1. EXECUTIVE SUMMARY

- 1.1. On the 20th September 2016 Cabinet approved the redevelopment of the Montagu Industrial Estate and approved a £15m Capital Programme for the acquisitions, by way of private treaty or under Compulsory Purchase of land on the estate.
- 1.2. On the 13th July 2017 Cabinet approved entering into a Joint Venture (JV) Agreement using a Limited Liability Partnership with Henry Boot Developments Limited (HBDL) as a special purchase vehicle for the Redevelopment of the Montagu Industrial Estate
- 1.3. The Council and HBDL are yet to agree the formal masterplan and obtain consent for the Compulsory Purchase Order (CPO). This will go to Cabinet in November 2019 for approval of the masterplan and the CPO.
- 1.4. For Phase 1 of the Redevelopment to proceed, surveys and a planning application are required to be undertaken and submitted to move forward with the redevelopment. HBDL under the JV agreements are due to undertake and pay for these.
- 1.5. However, the trigger point in the JV agreement for formal commencement of the JV for redevelopment is the formal acceptance by both parties of the masterplan.
- 1.6. For HBDL to expend the sums on Surveys and Planning applications they will require an indemnity protecting their expenditure until the masterplan is agreed at Cabinet.

- 1.7 The original joint venture agreement red outline plan excludes some parts of the Montagu Industrial Estate. The JV agreements now need to be amended to provide certainty for the JV master plan and to proceed with the first phase of the development. See part 2 Report for location plans of assets to be included.
- 1.8 Officers recommend the short indemnity agreement until the masterplan is agreed and officers recommend correcting the JV documents to add the additional sites to the redevelopment agreement.

2. RECOMMENDATIONS

- 2.1 It is recommended that the Executive Director for Place uses their delegated authority to approve the indemnity agreement with HBDL. Indemnifying any costs for Planning Permission, which shall be reimbursed should the joint venture redevelopment not proceed, following an unsuccessful cabinet approval for the master plan.
- 2.2 It is recommended that the Executive Director for Place approve the amended red outline plan of the Redevelopment to include the area for Phase 1, and the land at Rays Road, to assist with improved access to the development, and agrees that the JV legal documents be updated accordingly.

3. BACKGROUND

- 3.1 The Council is preparing a CPO for the Montagu industrial Estate. This is to enable the Council to acquire the private freeholds and to sever any leasehold interests to obtain vacant possession and redevelop.
- 3.2 HBDL have designed a masterplan for the redevelopment of the estate, which Council officers support. The formal approval of the master plan will go to Cabinet in July 2019.
- 3.4 Phase 1 of the Redevelopment at the north of the estate on Montagu Road is ready for redevelopment. Demolition of the buildings has been carried out by the Council. Detailed planning consent for this phase can be submitted now. The construction of this phase can commence once planning is approved.
- 3.5 Any planning permission or surveys will be for the benefit of the council. Successful outline or detailed planning consent will improve the value of the council's assets at Montagu Industrial Estate.

- 3.6 If for any reason the JV masterplan cannot be agreed then The Council will have to refund HBDL costs as per the indemnity agreement. The Council can still proceed to implement the planning consent to redevelop its assets in isolation. Therefore, the wider value of the indemnity amount will not be lost to the Council, even if it has to be refunded to HBDL, as it will have paid for a valuable planning permission on Council owned assets.
- 3.7 The Council currently hold £10m in the Capital budget for the redevelopment of the Montagu Industrial Estate. This fund is available to repay HBDL the indemnity amount should it be required.
- 3.8 When entering into the agreements with Henry Boot two areas of land that were part of the September 2016 Cabinet consent for redevelopment were excluded from the JV agreements. This was due to the potential disposal of these sites outside of the JV. These separate disposals are not progressing, and authority is sought for these sites to be added into the red outline of the JV agreements.
- 3.9 The additional sites will enable HBDL to progress with outline planning for the whole site and enable a better transport access to the estate from the south and to provide an additional 3 acres for Council owned land to be developed.

4. ALTERNATIVE OPTIONS CONSIDERED

Do nothing and wait until the masterplan is agreed without the additional Council sites

- 4.1 See Part 2
- 4.2 Phase 1 is ready for development and being vacant leaves the asset vulnerable. Significant costs are being incurred for security by the Council. Including this asset within the red line, as was originally intended in the earlier Cabinet Report, will allow it to be developed sooner by HBDL, as Phase 1 of the scheme.
- 4.3 Leaving land outside the joint venture agreement is not a sensible use of vacant assets as it delays their development and income producing potential.

Pay Henry Boot direct for Planning Permission costs

- 4.4 This option is not recommended. The joint venture partnership agreements place the responsibility of planning, surveys, design and construction in the hands of HBDL once the master plan is agreed.

- 4.5 Paying for the planning costs without the extra two sites will not produce the best development plan, as the site is smaller and poor access to the estate will continue.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The recommendation to provide the indemnity to HBDL and add the additional sites to the scheme will protect the Council's redevelopment plans by obtaining outline planning consent for the whole scheme with improved access to the development.
- 5.2 Phase 1 of the redevelopment when planning is approved and constructed could bring in significant income to the JV. Any delay in the planning or construction will delay the joint venture income.
- 5.3 Phase 1 site is currently vacant, costing significant daily costs to secure the asset from trespass and fly tipping attempts. The earliest this site can be developed the faster these costs can be reduced/removed.

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

See Part 2

6.2 Legal Implications

MD 17th May 2019

- 6.2.1 Section 1 of the Localism Act 2011 provides the Council with a general power of competence to do anything which an individual generally may do so long as it is not restricted under s.2 of that Act. The recommendations in this report are within the powers of the Council under its general power of competence.
- 6.2.2 It is noted that the Council is preparing a Compulsory Purchase Order for the Montagu industrial Estate. Under section 226 (1) (a) of the Town and Country Planning Act 1990 a local authority has a general power to make a compulsory purchase order for the acquisition of any land in their area in order to facilitate the carrying out of development, redevelopment or improvement in relation to the land. In exercising these powers, the Council must demonstrate that the proposed development/improvement is likely to contribute towards the promotion or improvement of the economic or social or environmental well-being of their area. When pursuing a CPO, the Council is expected to negotiate with landowners and demonstrate that there are no financial or planning impediments to development. Further Legal Implications of utilising CPO powers will be included in future reports. The Land Agreement entered by the Council in respect of the redevelopment contains terms related to obtaining the CPO which the Council must comply with.

9.3 Build our local economy to create a thriving place

- 9.3.1 The proposed redevelopment will provide a greater range of commercial employment use space. This will allow SMEs to be provided with suitable accommodation within the borough and permit business to expand or shrink as required.
- 9.3.2 The provision of new commercial space will also allow the borough to attract new businesses and given the range of unit typologies to be provided, will support businesses in their growth trajectories. The retention of employment use space within the borough will also benefit the borough's workforce by providing employment opportunities in close proximity to where they live. Additionally, the creation of new jobs will also improve spending power within the borough.

10. EQUALITIES IMPACT IMPLICATIONS

Corporate advice has been sought regarding equalities and an agreement has been reached that an equalities impact assessment is neither relevant nor proportionate for the approval of this report. However, it should be noted that projects or work stream deriving from this may be subject to a separate Equalities Impact Assessment. Therefore, any projects or work stream will be assessed independently on its need to undertake an EQIA to ensure that the council meets the Public Sector Duty of the Equality Act 2010.

11. PERFORMANCE AND DATA IMPLICATIONS

The redevelopment will be managed by Strategic Property Services and external consultants. The Montagu Industrial Estate will be managed by Strategic Property Services and external agents until the property is ready to transfer to the Joint Venture for redevelopment.

12. HEALTH AND SAFETY IMPLICATIONS

The surveys and inspection into asbestos and ground contamination as part of the planning and design process will be carried out by Henry Boot's approved sub-contractors, all access and investigative works will be monitored to ensure accordance with best practice and Legislation.

13. PUBLIC HEALTH IMPLICATIONS

There is no significant public health implication related to the DAR for Montagu Industrial Estate Redevelopment – Joint Venture Agreement Amendment and Indemnity Agreement

Background Papers

None.

6.2.3 The report recommends that additional land in the Council's ownership is transferred to the joint venture. By virtue of s123 Local Government Act 1972, the Council may dispose of land owned by it in any manner it wishes subject to obtaining the best consideration reasonably obtainable. The disposal must also be in accordance with the Council's Property Procedure Rules and the provisions of the Land Agreement entered by the Council in respect of the redevelopment.

6.2.4 See Part 2

6.3 Property Implications

6.3.1 The property implications are in the body of this report.

7. KEY RISKS

7.1 The risk has been assessed as limited. It is not expected that the indemnity will require payment of costs to HBDL. In the unlikely event of this happening, the value of the council asset will have increased significantly higher than the planning costs paid to HBDL, due to the new planning consent

8. INTERNAL DEPARTMENT IMPLICATIONS/CONSULTATION

8.1 Highways consulted no implications

8.2 Planning consulted no implications

8.3 Corporate Maintenance & Construction consulted no implications

9. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

9.1 Good homes in well-connected neighbourhoods

The proposed redevelopment of this site will significantly enhance the working environment of the estate's workforce. It will also have a positive impact on the surrounding neighbouring residents, particularly those residing on the estates boundary, as the built environment will significantly improve and relate better to adjacent residential units. The uses will significantly improve can provide additional accommodation to a much higher standard. There will also be an increase in the supply of much needed new housing for different tenures and income levels.

9.2 Sustain strong and healthy communities

Local residents, businesses and key stakeholders within and in close proximity to the Estate will be consulted about the scheme. A significant economic multiplier effect is envisaged, and it is estimated that c. 2520 jobs could be created and safeguarded as part of the redevelopment.

MUNICIPAL YEAR 2019/2020 REPORT NO.

REPORT TO:

Executive Director of
Resources/Executive Director of Place

REPORT OF:

Geoff Waterton - Head of Service,
Income
Dave Morris – Head of Service
Parking

Agenda - Part:	Item:
Subject:	KD: 4822
Concessionary services agreement award for the provision of Enforcement Agent services	
Wards: All	
Cabinet Member consulted:	N/A

1. EXECUTIVE SUMMARY

This report seeks approval to award the Council concessionary services agreement for enforcement agent services for council tax, business rate, parking enforcement and other corporate debt. The recommended suppliers are:

- Newlyn PLC (Council tax and Parking)
- Marston Holdings (Parking only)
- Phoenix Commercial Collections (Parking only)

The recommendation follows a competitive tender exercise using the Rotherham Framework agreement and evaluated by staff from the council tax, parking and procurement teams. To enter into a concessionary agreement with Newlyn PLC, Marston Holdings and Phoenix Commercial Collections for the provision of enforcement agent services The term of the concessionary agreement will initially be for one year but extendable to a maximum of four years with extensions agreed on a year by year basis at the sole discretion of the Council. It is envisaged the Agreement will commence on 1st August 2019.

2. RECOMMENDATIONS

To enter into a concessionary agreement with Newlyn PLC, Marston Holdings and Phoenix Commercial Collections for the provision of enforcement agent services. The term of the concessionary agreement will initially be for one year but extendable to a maximum of four years with extensions agreed on a year by year basis at the sole discretion of the Council.

3. BACKGROUND

The council raises over £200m (125,000 households) of taxation income per year, £140m business rates (7,000 properties), £15m car parking and £9m housing benefits overpayment. The vast majority of the income due is collected without the need for legal action. However, for a small minority the council undertakes enforcement action after all possible council action has been taken to recover the debt; enforcement is the last resort. The council has a requirement to collect the debt that is due.

The council has used enforcement agent services for many years. Since the Ministry of Justice introduced the Taking Control of Goods Regulations in 2014 enforcement agent services have been subject to national standards which all companies have to adhere to. Enfield predominantly uses enforcement agents to help collect council tax and business rate debt after the issue of a Liability Order and parking Penalty Charge Notices, but the service can be used for any council debt at the appropriate enforcement stage.

Enforcement agents form an integral part of the current collection enforcement process and are essential to maintaining the current collection performance levels. As enforcement agents raise and keep statutory fees as part of the collection service there is no cost to the Council and the contract is let as a concession contract.

Appendix A provides the detail on the expected value and the number of Enforcement Actions expected to be undertaken annually through the contract arrangements.

The basis of the concessionary agreement was that the Council is expected to pay no commission to the enforcement agent companies for their services as the enforcement agent companies retain payments for the statutory enforcement agent fees raised to pay for their work collecting the debts. These are currently:

- compliance stage - £75.00
- enforcement stage - £235
- sale or disposal stage - £110

The contracting arrangements work by the resident/business/penalty notice receiver being charged for the Enforcement costs. Payments collected over and above these costs are then made to the Council.

Enforcement agent services have come under increasing scrutiny nationally as public sector debt increases. Enfield is introducing increased safeguards for vulnerable and low-income residents to limit the impact of additional fees but enforcement agent collection remains a cost effective statutory debt collection function used for council tax, business rate and parking enforcement.

The term of the concessionary agreement will initially be for one year but extendable to a maximum of four years with extensions agreed on a year by year basis at the sole discretion of the Council. This is in accordance with the provisions of the Rotherham framework agreement

Procurement Process

The Council sought four providers to deliver the Council tax and Parking debt collection services. It was envisaged to appoint one contractor for the council tax, business rates, housing benefit overpayments, former tenant arrears and sundry debts collection and three (3) contractors for parking penalty charge debts.

Following approval to go out to the market to procure the services and a due diligence check on existing frameworks, on 13th April 2019, an Invitation to Further Competition ("ITFC") was issued under the Framework Agreement established by Rotherham Metropolitan Borough Council known as RMBC 16-046 Enforcement and Debt Collection Service Framework, as detailed within the OJEU notice (ref: 2016/5 – 202-365931)

<http://ted.europa.eu/TED/notice/udl?uri=TED:NOTICE:365931-2016:TEXT:EN:HTML>

For this exercise, council tax and business rates enforcement was tendered as 'Lot 1' and parking enforcement tendered as 'Lot 2'. The tender is for one company to be tendered for lot 1 and three enforcement agent companies to be appointed for Lot 2 with no guarantee of the volumes of work to be referred.

The tender was conducted as a concessionary service procedure. A services concession contract is defined in the Concession Contracts Regulations 2016 A contract for pecuniary interest concluded in writing by means of which one or more contracting authorities -----entrust the provision and the management of services ---- to one or more economic operators, the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or that right together with payment. The concessionaire shall assume the operating risk The application of service concessions for enforcement agent services was specifically examined in the case of *JBW Group Ltd v Ministry of Justice [2012]* where the Court of Appeal held that the bailiff enforcement contract was a service concession.

Ten participants of the Rotherham Framework were invited to submit bids based on Enfield's requirements and criteria. Four companies submitted bids for Lot 1. Four companies submitted bids for Lot 2. All companies submitted tenders based on the Councils specification.

Bids were then evaluated in accordance with the evaluation criteria set out in the tender documents, i.e. quality (70%) and price (30%). The quality assessment used to evaluate the bids included 5 method statement questions which included how the company intended to maximise collection, measure and monitor quality, additional measures to identify and support potentially vulnerable customers and proposals to ensure continuous improvement. Price evaluation includes the evaluation of additional free services and the fixed annual sum to be paid to a local money and debt advice agency to be agreed by the Council to help Enfield residents with debt and money advice

contribution to support debt. The successful bidder will also be required to sign up to the Citizen Advice Bureau Council Tax Protocol. The Protocol was developed in partnership with the Local Government Association and offers practical steps aimed at preventing people from getting into debt in the first place and outlines how to ensure enforcement agents act within the existing regulations and standards.

Officers from Revenues and Benefits, and Parking evaluated the bids in accordance with the pre-determined quality criteria. Detailed outcomes of the tender evaluation is provided in Part 2 report.

Enforcement agent performance will be monitored for each service through a number of performance indicators including collection rates, speed of collection and return of unpaid debt, customer service and complaint handling, identification of vulnerable customers and business liaison.

All companies have been assessed to have the capacity to perform the work within the framework agreement but should performance not meet the standard required by the Council work can be referred to other enforcement agents within this concessionary agreement.

Results – Preferred Bidders

Lot 1 - council tax, business rates, housing benefit overpayments, former tenant arrears and sundry debts

Bidder's name	Overall Scores out of 100	Ranking
Bidder A	85.65	1
Bidder B	73.97	2
Bidder C	72.98	3
Bidder D	66.86	4

For Lot 1, the recommendation for selection of the preferred bidder is the highest score, in this instance Bidder A. Bidder A has comfortably scored the highest of all four bidders.

Lot 2 Traffic penalty charge debts

Bidders	Overall scores	Ranking
Bidder W	98.69	1
Bidder X	98.43	2
Bidder Y	97.03	3
Bidder Z	86.53	4

For Lot 2, the highest score, in this instance Bidder W. However, the quality difference was marginal and the council was seeking three contractors and therefore, preferred Bidders W, X and Y are recommended.

The full extent of the scoring is detailed in the Part 2 report.

Please note that there were bidders that applied for both Lots, the Bidder referencing is intended to anonymise the scoring.

4. ALTERNATIVE OPTIONS CONSIDERED

The concessionary service procedure using the Rotherham framework agreement was considered the best approach because companies are vetted prior to being allowed to join the framework to ensure they meet standard requirements to provide enforcement agent services.

Enfield could have opted to consider changing its operating model and creating its own enforcement agent service. However, at this time it was not deemed feasible due to the operational and cost implications of procuring and maintaining a suitable case management IT system, staffing implications and the investment in modern proactive debt collection technology would have been prohibitive. However, the contracting arrangements are sufficiently flexible to enable this to be re-considered at a future date.

5. REASONS FOR RECOMMENDATIONS

The preferred Bidders were evaluated using the pre-determined criteria and the recommended bidders were ranked the highest.

6 COMMENTS OF THE DIRECTOR OF RESOURCES

6.1 Financial Implications

The award of this bailiff contract is on a "nil commission basis". As such there will be no financial implications to the Council. Any costs raised by the bailiffs are recoverable directly from the debtor, at a nil cost to the Council. However, the effectiveness of the recovery procedure does impact on the council's debt provision and income levels and therefore, contract monitoring is essential.

6.2 Legal Implications

- 6.2.1 Section 111 of the Local Government Act 1972 gives a local authority power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The matters outlined in this report are incidental to the functions of the Council's departments and are intended to help ensure an effective service.

- 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 The Council's Constitution, in particular the Contract Procedure Rules ("CPR's") permit the Council to procure services from an existing legally compliant framework as long as the framework terms permit such and the framework is accessible by the Council.
- 6.2.4 The Council's Corporate Procurement Service should conduct due diligence on the use of the Rotherham Framework and must be satisfied the Council may procure these concessionary services in accordance with the Framework Agreement. The Call Off must be undertaken strictly in accordance with the terms of the Framework
- 6.2.5 The judgment in *JBW Group Ltd v Ministry of Justice*, [2012] EWCA CIV8 as confirmed by *Newlyn v London Borough of Waltham Forest (Rev2)* [2016] EWHC 771 restates the position that contracts between enforcement agencies and creditors should now be viewed as 'service concessions'.
- 6.2.6 The Council must comply with its obligations relating to obtaining best value under the Local Government (Best Value Principles) Act 1999.
- 6.2.7 A contract in a form approved by legal services will be required with each of the successful providers.

Legal Implications provided by Lynn Shepherd on 11th July 2019 based on a Report circulated on 10th July 2019

7. KEY RISKS

The key risks and mitigations for letting this contract are set out below:

Risk	Mitigation
Income collection performance is not as high as expected	Contract monitoring arrangements to be put in place
Reputational damage from Enforcement Action undertaken that does not meet council values	Regular contract monitoring, quality checks and complaint monitoring will reduce the likelihood of this occurring.
Challenge from the allocation of the two parking enforcement notices	This will be managed through the appeals process

8. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

Maximising collection of council income supports the Council's priorities and increase the level of resources available to meet these priorities:

- Good homes in well-connected neighbourhood
- Sustain strong and healthy communities
- Build our local economy to create a thriving place

9. EQUALITIES IMPACT IMPLICATIONS

9.1 Debt can impact on the most vulnerable in society. Excellent support and advice work can make a big difference to the health and well-being of elderly, low income families, the disabled and customers with mental health issues. The tender evaluation included a specific method statement regarding additional measures for customers receiving council tax support, liaison with the Voluntary Sector and adherence to the CAB council tax protocol.

9.2 Non-payment of parking, council tax or business rate will lead to recovery action being taken against the liable party in accordance with legislation. The EQIA has been undertaken which has identified that this could impact any liable person, regardless of their characteristics and circumstances. The Council's local council tax support scheme includes retaining financial support for protected working age vulnerable groups which helps to mitigate any anticipated impact.

9.3 Protections exist within pre-enforcement agent referral to protect vulnerable customers. Vulnerable customers known to the council are excluded from enforcement agent referral. In addition, the Council provides over £2m in funding its council tax support scheme to protect council tax payers with a disability, carers and leaving care taxpayers from reductions in council tax support. Over 11,000 households do not have to contribute towards any council tax. Enforcement processes encourage vulnerable households to make contact. The council tax and benefit helpline maintains over 90% call answering performance to allow easy straightforward access to trained staff. The Council works closely with the voluntary sector and will sign up to the CAB enforcement protocol as part of the new concessionary agreement.

10. PERFORMANCE AND DATA IMPLICATIONS

10.1 In year collection performance for 2018/19 for council tax and business rate was 95.7% and 99% respectively. There are no additional data requirements needed from letting this contract as existing monitoring of enforcement officers is in place. The successful bidders are required to provide on-going performance data as part of the agreement.

11. HEALTH AND SAFETY IMPLICATIONS

11.1 N/A

12. HR IMPLICATIONS

12.1 N/A.

13. PUBLIC HEALTH IMPLICATIONS

13.1 There is an opportunity for co-ordinated debt, benefit and other advice can join with 'Health in all Policies' to take advantage of opportunities to improve resident health generally e.g. smoking, diet exercise advice etc. Enforcement agents form part of the council's front-line services and can provide vital intelligence to identify vulnerable households when visiting. Money/debt advice, liaison with the voluntary sector and signing the CAB council tax protocol forms an integral part of the service offer.

Background Papers

None

