

MUNICIPAL YEAR 2019/2020 REPORT NO. KD4941

MEETING TITLE AND DATE:

Agenda – Part: 1

Item:4941

REPORT OF:

Executive Director- People

Subject: Eldon Primary School –
Award of Contract – Boiler
Replacement

Contact officer and telephone number:

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Wards: Lower Edmonton
Key Decision No: 4941

Wards: Lower Edmonton

1. EXECUTIVE SUMMARY

- 1.1 This report seeks approval for award of contract to "Contractor A" for construction works, and scheme expenditure as detailed in this report for the boiler replacement and associated works for Eldon Primary School. ("School")
- 1.2 The construction works have been procured following a competitive quotation process via the London Tenders Portal in accordance with the Council's Contract Procedure Rules ("CPRs").

2. RECOMMENDATIONS

That the Executive Director - People:

Approves the contract award to "Contractor A" for the boiler replacement and associated works to Eldon Primary School as further detailed in Part 2 of this report.

- 2.1 Notes and approves total scheme expenditure of £336,129.75 which includes construction works, professional and technical costs and scheme contingency costs (as detailed in Part 2 of this report).

Details of the expenditure relating to the works of which includes the boiler replacement works contract, asbestos removal, enabling works costs, professional and technical costs and scheme contingency can found in Part 2 of this report.

3. BACKGROUND

- 3.1 Under the Scheme for Financing Schools, the Council retains responsibility for major items of repair within community schools above de minimus levels. 'Condition' is one strand of the Schools' Asset Management Plan alongside 'Sufficiency and Suitability' programme of projects has been collated to rectify and eliminate condition items of a high technical priority, this project has been identified as one of these schemes.

Support continued delegated authority to the Executive Director Resources and Executive Director People to take decisions on the:

- a. Programme management arrangements and operational resourcing, including procurement of any required support services.
 - b. Commencing feasibility or initial design to inform pre-application discussions with planning and procurement of resources for this activity.
 - c. Cost estimates, budgets and spend for projects in advance of updates to the Capital Programme.
 - d. Submission of planning applications.
 - e. The appropriate procurement routes for professional support services and construction for individual schemes.
- 3.2 Last cabinet 2018 approved KD 4303 for the School's Fire and Condition programme. A further operational decision adding these works to the programme has been signed and this Key Decision 4941 gives specific approval to the boiler scheme.
- 3.2.1 A scope of required works was produced by the council's Corporate Maintenance and Construction Team (CMCT) which included:
- Boiler and radiator work to the Adventure Hub building,
 - all external works to the flues including scaffolding,
 - works to the Heating manifolds in the Early Years Building
 - Replacement of the 2No. Gas Boilers
 - Amendments to the associated pipework and plant in the infant building
 - Early Years Building – Replacement of the 2No. Gas Boilers and amendments to the associated pipework

Official

and plant. Upgrade/Replacement of the BMS Controls to the heating/domestic hot water.

- Junior Building – Upgrade/Replacement of the BMS Controls to the heating/domestic hot water systems in the Junior Boiler Room
- 3.3 CMCT compiled the Tender list using the Construction Line accreditation service to verify essential credentials including Financial Standing and Health & Safety compliance
- 3.4 CMCT issued the tender documents on the 3rd June 2019 and the tenders received were downloaded from the London Tenders Portal on Wednesday 19th June 2019.
- 3.5 The Tendering Procedure is in accordance with the JCT Practice Note 6 (series 2) 'Main Contract Tendering' Alternative 2. The tender was based on the JCT Intermediate Building Contract with Contractor's Design 2016 Edition. The tender documentation included: Preliminaries, Specification and Drawings, and Pricing Document. The Tender was invited on a lump sum firm price basis. The tender documents stated a contract period of 9 weeks.
- 3.6 Six contractors were invited to submit a return. The tenders were evaluated in accordance with the council's corporate tendering procedure to arrive at the recommendation for contract award to Contractor 'A' as detailed in Part 2 of this report.
- 3.7 CMCT have confirmed that all tenderers met the programme requirements as set out in the Preliminaries / General Requirements;
- 3.8 Provisional programme –
Pre-construction work will begin with Asbestos Removal on 22 July for a period of 2-3 weeks.
The construction work will begin on 12th August 2019 with completion on 21st October 2019.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 To do nothing this could result in a school closure leading to a loss of statutory school days for Enfield pupils, this in turn could result in court action and damage to the council's reputation
- 4.2 There are no other options that will address the safeguarding, security and safety concerns.

5. REASONS FOR RECOMMENDATIONS

- 5.1 CMCT and Stace The Borough's Quantity Surveyors have advised that the tender from Contractor "A" is compliant and is the most economically advantageous tender.
- 5.2 Works will ensure that "the school" is functional from a heating and hot water perspective and minimises risk to school closure in colder months.

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

The total project cost of £336,129.75 will be wholly funded from central government capital grant allocation. Annual maintenance costs from this project will be funded from existing revenue budgets (which is wholly funded from central government grant also). Further expenditure breakdown is provided in the Part 2 report.

6.2 Legal Implications

- 6.2.1 The Council has a general responsibility for education which includes securing efficient primary education to meet the needs of the population in its area under Section 13 of the Education Act 1996 (as amended by the Learning and Skills Act 2000).
- 6.2.2 Section 111 of the Local Government Act 1972 further enables local authorities to do anything, including incurring expenditure, borrowing, which facilitate or are conducive or incidental to the discharge of their functions. Furthermore, the Council has the power under section 1 (1) of the Localism Act 2011 to do anything that individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles. The recommendations within this report are in accordance with these powers.
- 6.2.3 The contract value is below the EU threshold hence the Public Contracts Regulations 2015 do not apply. The contract has therefore been procured in accordance with the Council's Contract Procedure Rules (CPR 3.5), and six tenderers were asked to submit quotations.
- 6.2.4 As the value of the contract is over £250,000, the award constitutes a Key Decision under the Council's Constitution and

as such, must comply with the governance processes set out for Key Decisions.

- 6.2.5 All legal agreements (including all associated documentation) arising from the matters described in this Report must be approved in advance of contract commencement, by Legal Services. Contracts whose value exceeds £250,000 are required to be executed under seal and performance security should be obtained, unless the Director of Finance Resources and Customer Services considers this to be unnecessary.

Provided by LA based on the report dated 05.07.19 to Legal

6.3 Property Implications

- 6.3.1 The implementation of the Condition Programme will extend the life of school buildings and provide a safe and suitable learning environment for pupils.
- 6.3.2 All new or revised asset data arising out of the proposed works must be sent by the Project Manager to Strategic Property Services for input onto the Asset Management Data System, ATRIUM, including revised site plans, floor plans, asset information and maintenance regimes.

6.4 Procurement Implications

- 6.4.1 The procurement was undertaken in accordance with the Councils Contract Procedure Rules (CPR's) and the Public Contracts Regulations (2015).
 - 6.4.1.1 The procurement was undertaken using the London Tenders Portal (ref DN412996).
- 6.4.2 The award of the contract, including evidence of authority to award, promoting to the Councils Contract Register, and the uploading of executed contracts must be undertaken on the London Tenders Portal including future management of the contract.
- 6.4.3 All awarded projects must be promoted to Contracts Finder to comply with the Government's transparency requirements.

7. KEY RISKS

- 7.1 The key risks to this contract is related to the possible poor performance of the consultant/contractors. This risk is mitigated by robust performance/contract management.

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

8.1 Good homes in well-connected neighbourhoods

This programme will assist the Council to deliver its construction related projects and programmes which in turn help support the delivery of education services to the benefit of the community.

8.2 Sustain strong and healthy communities

This term contract will assist in the procurement of construction related activity within the borough and its associated employment and economic benefits. The Borough needs to ensure appropriate infrastructure is in place to allow for the growth of the population.

8.3 Build our local economy to create a thriving place

The provision of good quality schools and buildings helps to ensure a stable strong community.

9. EQUALITIES IMPACT IMPLICATIONS

9.1 The provision of local schools across the borough ensures quality of rights to good education provision.

10. PERFORMANCE AND DATA IMPLICATIONS

10.1 The contract requires the consultant to meet the professional standards of the Royal Institute of British Architects and the Framework Contract. The performance of the consultant will be monitored by Corporate Maintenance and Construction Team.

11. PUBLIC HEALTH IMPLICATIONS

11.1 The provision of good quality schools helps to ensure a stable, strong community.

Background Papers

None

MUNICIPAL YEAR 2019/2020 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

PORTFOLIO DECISION OF:

Councillor Caliskan
Leader of Council

REPORT OF:

Sarah Cary
Executive Director
Place

Agenda – Part: 1

KD Num: 4819

Subject: HIF – Appointment of the
Successful Tenderer for Ground Investigation
Works, Testing and Reporting.

Wards: Upper Edmonton

Contact officer and telephone number: Chisholm Hardy, 020 8379 6769

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1. EXECUTIVE SUMMARY

- 1.1 A combined ground contamination and geotechnical investigation is essential to inform detailed design of Meridian Water infrastructure and remediation strategy.
- 1.2 KD 4750 (HIF Works. Procurement of Ground Investigation Works – approved 31.10.18) authorised going out to the market to appoint a contractor to undertake ground investigation works. The procurement was undertaken by using the London Tender Portal.
- 1.3 This report seeks authority to appoint a Contractor to carry out Ground Investigation Work to support the delivery of the Housing Infrastructure Fund (HIF) scope of works for Meridian Water.

2. RECOMMENDATIONS

It is recommended that the Leader of Council:

- 2.1 Approves the appointment of the successful tenderer, Bidder A, as set out in this report
- 2.2 Authorises the authorised Legal Officer to complete and sign the Terms and Conditions of the appointment.

3. BACKGROUND

3.1 Housing Infrastructure Fund

- 3.1.1 The Council is enabling the delivery of approximately 10,000 new homes over a 20-year period at Meridian Water. The development is located between Edmonton, Tottenham, and Walthamstow and ideally placed to deliver the spatial, sustainable growth, and economic resilience objectives of the London Borough of Enfield as one of the capital's largest regeneration opportunities.
- 3.1.2 The Housing Infrastructure Fund (HIF) is a government capital grant programme from the Ministry for Housing, Communities and Local Government (MHCLG) aimed to unlock housing sites and help deliver new homes.
- 3.1.3 On 3rd December 2018, Enfield Council, via the GLA, made a bid for £156M to build strategic infrastructure in Meridian Water to unlock the delivery of 10,000 homes in Meridian Water. On 20th March 2018 the MHCLG confirmed that the Council (supported by the GLA) had successfully passed the first stage of the Forward Funding bid process and that the Council's bid would be taken forward to the second stage. The second stage required a fully worked up Green Book compliant business case underpinned by detailed technical work. Since the confirmation, Meridian Water team had prepared with consultant teams to prepare the second stage of the funding application. The bid due diligence process is underway, and officers are expecting a funding announcement to be made in summer 2019
- 3.1.5 The deadline to deliver the HIF works by March 2024 is tight so officers have developed a proactive strategy to initiate work that is on the critical delivery path now, prior to confirmation from MHCLG of whether the bid has been successful. This proactive strategy has been positively received by the GLA.
- 3.1.6 For example, essential works have commenced, including topographic surveys, flood investigation, transportation modelling and concept designs as to provide technical information in the business case and to ensure to meet the funding delivery deadline.
- 3.1.7 Another key workstream that must be carried out is Ground Investigation, the objective of which is twofold:- to provide information on geotechnical nature of the ground to inform design of below ground elements of the Development i.e. substructures, foundations, services, flood control, earthworks etc and, secondly, to detail the nature and levels of any contamination and the remediation required thereof.

3.1.8 In case of the scenario where HIF application is unsuccessful, none of the Ground Investigation Work should be abortive as this design, planning and enabling works should reduce both the costs and the risks required to be taken by a future developer, therefore increasing the attractiveness of the scheme to the marketplace.

3.1.9 The requirement for these works has been part of the HIF scope since early 2018, hence specific allowance for the works in the January 2019 budget.

3.2 The Site

3.2.1 The area requiring G.I. is that area incorporating all HIF works – see Appendix A

3.2.2 The sites within the area comprise those owned by LBE along with some freeholds not owned by LBE

LBE Owned

- Orbital Business Park (Dwyer)
- Ikea Clear
- Gasholder – Leaside Road
- Stonehill and Hastingwood

Freehold

- Lea Valley Regional Parks Authority
- Thames Water Utilities Ltd
- Tesco
- Ikea

3.2.3 Access agreements with leaseholders are being obtained by LBE with assistance of managing agents Glenny. Licences to enter and carry out works on freeholder sites are being obtained by Meridian Water Team working with LBE Legal Services.

3.3 Scope of Works

3.3.1 The objective of Ground Investigation is twofold:- to provide information on the geotechnical nature of the ground to inform design of below ground elements of the Development i.e. earthworks, substructures, foundations, services, and, secondly, to detail the nature and levels of any contamination and the remediation thereof

- 3.3.2 Create site compounds on currently vacant plots in Stonehill and Orbital, execute various enabling works, i.e. clearing and reinstating site access controls, managing invasive plant species and other environmental considerations.
- 3.3.3 Execute boreholes, trial pits and trial trenches at approximately 160 locations (see Appendix A – Plan of Ground Investigation locations). All arisings removed from site and ground reinstated to as before.
- 3.3.4 Collect soil samples for laboratory testing to determine geotechnical properties, and types and levels of contamination.
- 3.3.6 Installation of approximately 63 standpipes and access covers (using the boreholes) for long term ground water monitoring.
- 3.3.7 Presentation of field and laboratory data as a factual report to inform design of a Remediation and Materials Management Framework for HIF infrastructure and remediation.

3.4 Procurement Process

- 3.4.1 The procurement process used was that approved in KD 4750.
- 3.4.2 A pre-tender engagement exercise was carried out by technical specialist Ove Arup, which identified seven contractors with the capacity and interest to carry out these works.
- 3.4.3 The tender package comprised a technical specification, a bill of quantities, drawings and contract documents prepared by Ove Arup with input from Meridian Water team, P&C Board and Legal Department. The Invitation To Tender was issued by the Meridian Water Team through the LTP.
- 3.4.4 The companies that had expressed an interest in bidding and were issued with tenders on 6th November 2018 with return date of 14th December.
Three companies opted out of returning a tender due to workloads and inability to meet the Terms and Conditions and technical specification. Four contractors submitted tenders albeit with three of them qualified. After an extensive appraisal and clarification process, two of those four bids were deemed non-compliant (see Part 2 for reasons)

3.5 Evaluation

- 3.5.1 The compliant bids were evaluated on the basis of a set of evaluation criteria set out in the Invitation to Tender. Evaluation percentages were split 60% quality and 40% price. The emphasis on quality was based on Health and Safety requirements, with over 60% of locations being in publicly accessed or lessee occupied areas, plus need for high quality

sampling and reporting. The evaluation team included the technical knowledge and expertise to carry out both the quality and price evaluation and to ensure compliance with the scope of services.

3.5.2 The bidder's scores are as follows.

Bidder	Total Price Score	Total Quality Score	Summary Quality and Price Score
Bidder A	39%	50%	89%
Bidder B	Non Compliant (see Part 2 for reasons)		
Bidder C	40%	45%	85%
Bidder D	Non Compliant (see Part 2 for reasons)		

3.5.3 Bidder A has shown the best combination of quality and price, has demonstrated an excellent understanding of the requirements and an ability to deliver the work to a high standard. It is therefore recommended that Bidder A is appointed.

3.6 Cost

3.6.1 See Part 2

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 Halt procurement and do not carry out G.I. works and proceed at risk with procurement of HIF works and Meridian Development generally without the information provided by Ground Investigation - The Council have chosen to be the master developer for Meridian Water and are directly procuring the infrastructure works. These works will require Planning Consent which will come with an obligation (Condition) to ensure land contamination is identified and a remediation framework appropriate to future development is in place. Infrastructure works cannot commence until this condition is discharged and leaving this discharge responsibility (and therefore the G.I. works) to the appointed HIF contractor will result in a delay to commencement of the works, threatening the completion deadline imposed by the HIF funders, and, inevitably, create excessive risk pricing (additional costs to tune of several million pounds) by the HIF

works bidders. Carrying out Ground Investigation works by the Council will eradicate these two risks.

- 4.2 Delay procurement or re-procure the works – insufficient time to do so as these works require a six month programme to complete and therefore need to be commenced in summer 2019 in order to provide the information ahead of formal appointment of the HIF contractor.

5. REASONS FOR RECOMMENDATIONS

- 5.1 These works are essential preparation for HIF procurement
- 5.2 Without this information, design of all elements below ground level, and the major earthworks would be based on guesswork. The levels of contamination would be unknown, so it is not possible to estimate the extent of remediation required. This would result in programmes being open ended and final costs unquantifiable.
- 5.3 Notwithstanding the HIF award in Summer 2019, LBE will still require this G.I. information to inform their own development plans for Meridian Water.

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 On 30th January 2019 cabinet approved (KD 4469) a Meridian Water Budget with an allocation for this expenditure. (Details in Part 2 of this report).

6.2 Legal Implications

- 6.2.1 The Council has a general power of competence under section 1(1) of the Localism Act 2011 to do anything that individuals may do, provided it is not prohibited by legislation and subject to Public Law principles.
- 6.2.2 The estimated value of the contract is below the Public Contract Regulations 2015 threshold for works. However, all Council procurement must follow the overarching principles of value for money,

transparency, proportionality, equal treatment and non-discrimination and comply with the Council's constitution including the Contract Procedure Rules. The procurement process undertaken in respect of the appointment of a contractor to carry out Ground Investigation Work is described in detail in this Report.

- 6.2.3 Throughout the engagement the chosen contractor, the Council must comply with its obligations of obtaining best value under the Local Government Act 1999.
- 6.2.4 Where necessary, officers should continue to liaise with the Legal and Property Services teams in respect of obtaining any necessary licences and consents to carry out works on freeholder sites and leaseholder sites.
- 6.2.5 All legal agreements arising from the matters described in this report must be approved in advance of contract commencement by Legal Services on behalf of the Director of Law and Governance.
- 6.2.6 See Part 2 of this Report.

6.3 Property Implications

The appointment of a consultant to understand the risks/costs etc does not of itself carry any property implications other than the obvious matter that the contractors should ensure that they comply with any licence granted to undertake works on our land with full reinstatement thereafter. The contractor/consultant will assume all risks in relation to compliance

6.4 Procurement Implications

- 6.4.1 The procurement was undertaken in accordance with the Councils Contract Procedure Rules (CPR's).
- 6.4.2 The award of contract, including evidence of authority to award, promoting to the Councils Contract Register, and the uploading of the executed contract must be undertaken on the London Tenders Portal including future management of the contract.
- 6.4.3 All awarded contracts must be promoted to Contracts Finder to comply with the Government's transparency requirements.
- 6.4.4 See Part 2

7. KEY RISKS

ID	Title	Risk Description	Mitigation
01	Access to freehold and tenanted properties to carry out works	Tenant refuses to agree to access for drilling works. Tenant agrees access but withdraws on day of works.	Intensive management of liaison process by Council's Property Management Agents (Glenny) who have long established relationships with tenants, supported by the ARUP Supervising Engineer, LBE Officer and (when appointed) full time Contractor's Project Manager. A pre-start meeting will be held with affected individual lessees at which method statements and programmes that minimise impact on day to day operations will be agreed before any work takes place. Decant space in a vacant unit will be available for the duration of individual works to those who require it. Some G.I. locations are inside freeholder sites within the Meridian Development area and access to those will be negotiated by Meridian Water Team with support on formal process and agreements from LBE Legal and Property Services. The pre-start meeting will also identify any who cannot accommodate us, in time to re-programme with alternative locations. If we get a refusal on an agreed access day, the programme is designed to have reserve locations immediately available. The intention is to avoid any standing time, and associated costs, due to access issues.
02	Contractor failing to complete	Contractor commences on site but fails to complete final Report	A dedicated, full time on site, Supervising Engineer and Contracts Administrator from Arup will be commissioned to manage the investigation activities. Contract contains a performance bond and retention rates designed to provide financial security in event of contractor falling into administration.
03	Cost	Uncertainty is inherent to site investigation. Additional costs may be incurred due to additional bores identified as necessary after	Appropriate contingency incorporated in budget. Variations can only be authorised by the full time, on site, Arup supervising engineer prior to being executed.

		initial works plus relocation of some locations due to unforeseeable ground conditions	
04	Health & Safety	Much of the work is within tenants' demises and areas accessible to the public	Tender assessment based on 60/40 split between quality/price with quality emphasis on H&S and tight management

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

8.1 Good homes in well-connected neighbourhoods

Meridian Water will deliver fairness for all by providing homes of different tenures, types and sizes to meet the diverse need of the community. In addition, it will create well managed open spaces making Meridian Water a key destination and a place where people want to live, work and play. The decision to terminate the master developer procurement process will enable these benefits to be delivered more quickly and with the potential for a better return for the tax payers of Enfield.

8.2 Sustain strong and healthy communities

Meridian Water will deliver new homes, jobs and infrastructure: both major new physical and transport infrastructure and social infrastructure including medical facilities, schools, nurseries, community centres, parks and gardens. Clean and green energy will be provided by the Lee Valley Heat Network, which will ensure that the development is environmentally sustainable.

8.3 Build our local economy to create a thriving place

The new neighbourhood at Meridian Water will be designed to foster social cohesion through a series of physical and social interventions, such as direct pedestrian, cycle and other connections into existing neighbouring community for example Angel Edmonton; and position new community facility to encourage a mixed use by both existing communities and future new residents. The new Meridian Water station and public realm will serve as a hub where existing and new communities will mingle and interact.

9. EQUALITIES IMPACT IMPLICATIONS

Equality and diversity considerations will continue to be integrated into the development and delivery work for Meridian Water to make sure they are embedded in the decision-making process and to avoid costly design changes. Corporate advice has been sought regarding equalities and whilst there are no Equalities implications in agreeing the recommendations outlined in this progress report. It is recommended that as part of the review of the Meridian Water Project, the Meridian Water EQIA be reviewed and updated to embed Equalities and Diversity in the future procurement, design and delivery of the project. In addition to this it should be noted that any contracts awarded should include a duty on the successful applicant to assist us with meeting our obligations under the Equalities Act 2010.

10. PERFORMANCE AND DATA IMPLICATIONS

Delivery of a comprehensive regeneration scheme at Meridian Water is a corporate priority within the council's Business Plan for 2016-2018. Completion of the Masterplan and the delivery of phased infrastructure improvements including increased rail services, station improvements and new homes will help to meet the strategic priority: "a borough that attracts inward investment and supports sustainable regeneration and growth."

11. HEALTH AND SAFETY IMPLICATIONS

The Meridian Water Project bringing widespread improvements in transport, accessibility, and comprehensive remediation of contaminated brownfield sites will have positive health and safety benefits for the local community and the future residents, workers and leisure users at Meridian Water.

12. PUBLIC HEALTH IMPLICATIONS

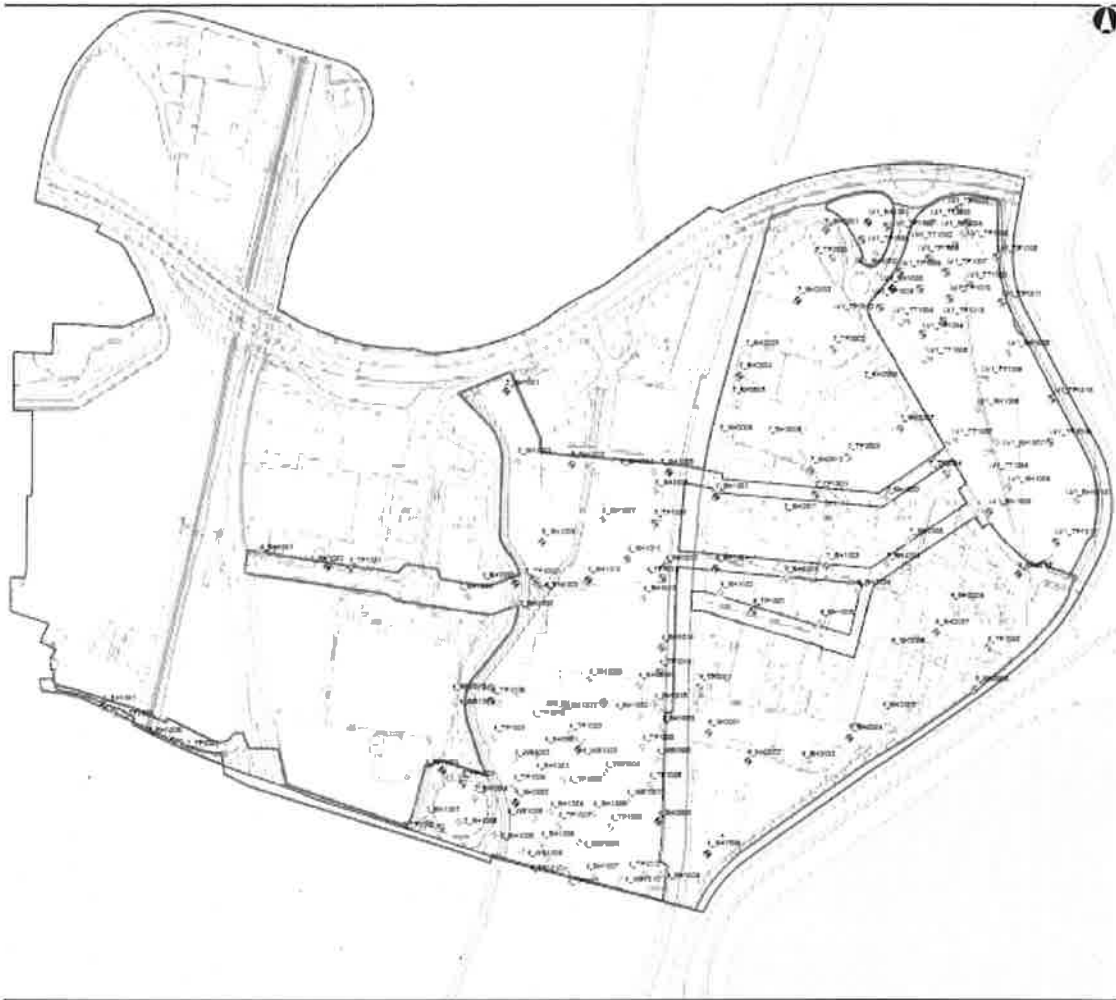
These works will provide the understanding required of the current levels of contamination and contribute to a framework document, for remediation and materials handling, that will be an essential part of consultations with the Environmental Agency and local planning authority as well as technical documentation for HIF procurement and

implementation – all to allow the Council to successfully remediate the land for redevelopment.

A regeneration neighbourhood at Meridian Water will have far reaching public health benefits particularly from the promotion and expansion of public transport, namely a more frequent rail service, an expanded bus network and integrated walk and cycle routes. This together with extensive green space, water fountains and a positive urban environment will continue to well-being at Meridian Water. The development will include all necessary public health and community services from health clinics to nurseries

Background Papers

Appendix A - G.I. Locations



MUNICIPAL YEAR 2018/2019 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

PORTFOLIO DECISION OF:

Cabinet Member for
Licensing and Regulatory
Services

REPORT OF:

Director – Environment
and Operational Services

Contact officer and telephone number: Sue Mcdaid, 02083793680

Email: sue.mcdaid@enfield.gov.uk

Agenda – Part: 1

KD Num: 4872

**Subject: Setting of the level of fixed
penalties under Environmental Protection
(Miscellaneous Amendments) (England
and Wales) Regulations 2018/1227**

Wards: All

1. EXECUTIVE SUMMARY

- 1.1 On 7 January 2019, the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018/1227 (The Regulations) came into force. The Regulations make an amendment to the Environmental Protection Act 1990 (the Act).
- 1.2 The Regulations allow a local authority to issue a fixed penalty notice (FPN) to an occupier of any domestic property in England who has failed to take all such measures available to them as are reasonable in the circumstances to secure that any transfer by them of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.
- 1.3 The Regulations enable the Council to determine the penalty level, which cannot be less than £150 and not more than £400. If no level is set, then the default FPN level is £200. A reduced amount can be considered if the penalty is paid within 10 days (and must not be less than £120). The Council is not required to set a reduced FPN level for 'early payment'. We have not set a reduced amount for 'early payment' for other FPNs levels previously.

2. RECOMMENDATIONS

That the Cabinet Member for Licensing and Regulatory Services:

- 2.1 Agrees the penalty level be set at £400.
- 2.2 Agrees not to apply an early payment option.

3. BACKGROUND

- 3.1 Section 34(2A) Environmental Protection Act 1990 (the Act) places a duty on the occupier of any domestic property in England or Wales with regards to waste produced on the property. The duty is to take all reasonable measures to secure that any transfer of that waste is only to an authorised person or to a person for authorised transport purposes. It is a criminal offence to fail to meet this duty.
- 3.2 On 7 January 2019, the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018/1227 (The Regulations) came into force. The Regulations make an amendment to the Act.
- 3.3 The Regulations insert section 34ZA into the Act after section 34. This enables an enforcement authority in England, either the Environment Agency or a local authority, to give a person who has failed to comply with their waste duty of care under section 34(2A) a FPN. The FPN offers the person the opportunity to discharge their criminal liability upon paying the fixed penalty. There is no obligation to offer an alleged offender the option to discharge liability through an FPN. However, in some cases it can be more proportionate than prosecution through the courts.

3.2 Setting the FPN level

- 3.2.1 The Regulations enable the Council to determine the penalty level, which cannot be less than £150 and not more than £400. If no level is set, then the default level is £200. A reduced amount can be considered if the penalty is paid within 10 days (and must not be less than £120). The Council is not required to set a reduced FPN level for 'early payment'. We have not set a reduced amount for 'early payment' for other FPNs levels previously. Setting the FPN level at the maximum of £400 ensures that there is sufficient sanction for the offence and we anticipate will also have a deterrent factor. In many cases it will have been cheaper to have disposed of the waste properly, rather than illegally and incurred a £400 FPN.
- 3.2.2 The Regulations do not specify what must be considered when setting the level of a fixed penalty notice; only setting the maximum and minimum levels of £400 and £150 respectively. Therefore, in determining the level, it is not unreasonable to consider the following:
 - (a) Any justifiable costs or expected costs incurred or to be incurred in connection with the administration of the provisions of the legislation, and as a minimum cover officer time and costs, preparation and service of a FPN

- 5.3 The process for issuing a FPN for a duty of care offence is the same as for other FPN offences for which the Council currently issues such notices.
- 5.4 The recommended level for the FPN is considered justifiable, proportionate and consistent with penalties for other waste offences. The FPN allows for the responsible parties to discharge any liability to conviction swiftly but still at a rate that demonstrates the seriousness of the offence which is intended to deter repeat offending.
- 5.5 The FPN level would also be in line with surrounding London boroughs tackling illegal waste practices and failure to adopt the recommended level could see the borough become a target for fly tippers, knowing they face a lesser punishment, if they were caught in Enfield.

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

This report seeks to agree that the penalty level be set at £400.

The Regulations enable the Council to determine the penalty level, which cannot be less than £150 and not more than £400. If no level is set, then the default level is £200. A reduced amount can be considered if the penalty is paid within 10 days (and must not be less than £120). The Council is not required to set a reduced FPN level for 'early payment'. We have not set a reduced amount for 'early payment' for other FPNs levels previously.

The costs of administering these new FPNs are met from within existing resources and the receipts will be used to support ongoing enforcement action.

6.2 Legal Implications

- 6.2.1 On 7 January 2019, the Regulations came into force. The Regulations make an amendment to the Act enabling local authorities (a waste collection authority) to issue FPNs for contravention of section 34 (2A) of the Act – failing to comply with the duty relating to the transfer of household waste.
- 6.2.2 The Regulations insert section 34ZA into the Act after section 34 and sets out the processes to be followed when issuing an FPN.
- 6.2.3 If no FPN level is set then the default level is £200.

6.3 Property Implications

None.

- (b) Cost or expected cost, of enforcing the provisions of the legislation, including the recovery of the cost of the removal of the unauthorised waste deposit

3.2.3 This new FPN mechanism is like that which applies to the offence of illegal waste deposit (fly tipping) with the same FPN levels set by Regulations. The FPN levels for fly tipping were set at £400 to mirror that of other London boroughs in consultation with London Councils' Transport & Environment Committee. To set this duty of care FPN level at the same level as fly tipping will provide a consistent approach in dealing with illegal waste practices

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 There is an option of not setting a FPN level, in which case the level would default to £200 but this would not be consistent with current practice adopted by other London Councils tackling illegal waste practices

4.2 There is also the option of not issuing FPNs for duty of care offences and only prosecute. However, two thirds of fly-tipping incidents involve household waste, often because of an individual breaching their duty of care to ensure their waste is taken away by an authorised carrier. The FPN is intended to reduce the flow of waste to those who would go on to dispose of it illegally. The FPN allows a more proportionate approach to enforcement both for local authorities in costs of enforcement, and for householders in size of penalty and avoiding a criminal record.

4.3 There is also an option to adopt a reduced penalty level for early payment. By not offering an early payment option, it will send out a strong message that failing in one's duty of care with respect to waste transfer is unacceptable behaviour that the Council takes seriously. This is also consistent with Enfield Council's approach with other FPNs.

5. REASONS FOR RECOMMENDATIONS

5.1 The borough is adversely impacted by a significant number of daily fly tipping incidences. Many of these incidences are in relation to household waste dumped within the street scene.

5.2 The Waste Enforcement Unit look to implement strong penalties against those people responsible for fly tipping and those failing in their duty of care to manage the transfer of their waste. Implementing the maximum FPN level, would be a greater deterrent to illegal waste disposal practices and allow for matters to be resolved in a swifter and more efficient manner rather than automatically proceeding through the courts.

7. KEY RISKS

- 7.1 Unlike other FPN regimes for waste offences a person issued a notice must be informed that they may make representations to the Council about the allegations contained in it. This may lead to an increase in officer time in evaluating such representations and the level of the penalty may be a driver for such representations. This risk can be mitigated by ensuring that full particulars of the circumstances alleged to constitute the offence are detailed in the notice.

8. INTERNAL DEPARTMENT IMPLICATIONS/CONSULTATION

Public Realm (waste collection and street scene service) are supportive of this approach.

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

9.1 Good homes in well-connected neighbourhoods

Adopting a balanced and proportionate approach in tackling waste crime gives environmental benefits. The option of issuing FPNs to tackle waste crime adds to the range of enforcement options available to the Council thereby improving the quality of the public realm by helping to reduce and prevent the environment being defaced by unlawful deposits of waste thereby supporting this Council priority.

9.2 Sustain strong and healthy communities

The enhanced provision of environmental enforcement options contributes positively towards creating a cleaner, greener environment and improving quality of life and community safety.

9.3 Build our local economy to create a thriving place

The enhanced provision of environmental enforcement options contributes positively towards creating an environment to those who wish to invest in the economy of the borough by creating an attractive place to live and work.

10. EQUALITIES IMPACT IMPLICATIONS

- 10.1 The provision of general enforcement services has already been considered as part of the Regulatory Service's retrospective Equalities Impact Assessment.
- 10.2 The Council's approach to enforcement is detailed in its Enforcement Policy adopted by Cabinet.

- 10.3 For the introduction of the fixed penalty notice and its level, there is no, or no significant, impact on business, charities, voluntary bodies or the public sector.

11. PERFORMANCE AND DATA IMPLICATIONS

The use of FPNs for the Duty of Care will be monitored and measured alongside other enforcement actions used in the waste enforcement team.

12. HEALTH AND SAFETY IMPLICATIONS

None.

13. HR IMPLICATIONS

None.

14. PUBLIC HEALTH IMPLICATIONS

There are no negative impacts associated with the adoption of this report's recommendations.

The proposed FPN levels will have a positive impact upon the health and well-being of the public in Enfield by reducing the environmental impacts upon the streets which is detrimental to health and the environment.

Background Papers

None.