

London Borough of Enfield

Operational Report of Housing and Regeneration Director of Place

Subject: Memorandum of Understanding – signing up to the Memorandum of Understanding for release of grant funding from BEIS for Phase 1B of the Local Authority Delivery scheme

Cabinet Member: Cllr Gina Needs, Cabinet Member for Social Housing
Executive Director: Sarah Cary, Executive Director Place

Key Decision: KD 5298/U231

Purpose of Report

1. Enfield Council have been successful in a bidding application for Phase 1B of the Local Authority Delivery scheme and received confirmation from BEIS on the 2nd February 2021 that the application has successfully met the assessment criteria for funding to provide energy efficiency upgrades to low-income homes which amounts to £305,000 worth of funding for 61 Council properties and the work is for the installation of External Wall Insulation.
2. The signing of the Memorandum of Understanding will release BEIS funding and enable the energy efficiency upgrade works to proceed to the 61 Council properties.
3. The Council's match funding of this energy efficiency upgrade works will be drawn down from the existing demand-led works budget in the housing capital programme as detailed in KD 4969 Housing Revenue Account 30 year business plan which authorises the council to draw down and use the budget in this way.
4. This report seeks authority for the Director of Housing and Regeneration to sign a Memorandum of Understanding and participation agreement between the Council and BEIS.

Proposal(s)

5. In accordance with the delegated powers provided under Key Decision 5298/U231, that the Director of Housing and Regeneration approve signing the Memorandum of Understanding by the 16th February 2021 deadline to ensure grant funding from Central Government is obtained.

6. To authorise entry into the Memorandum of Understanding and complete all other necessary legal documentation to achieve the objectives of the energy efficiency upgrade works.

Reason for Proposal(s)

7. Enfield Council have been successful in the bidding application for Phase 1B of the Local Authority Delivery and the next step is for Enfield Council to sign and return the Memorandum of Understanding and associated documentation included within the MOU by the 16th February 2021 to secure the funding.
8. If documentation is returned after this date BEIS cannot guarantee grants will be processed and we may have to retract our offer. Ultimately, if all signed documentation is not returned by 26th February 2021, the grant offer will be retracted.
9. The release of the external funding from Central Government supports the Council in the delivery of a retrofit plan, working towards a minimum SAP score of 86 for every property by 2030 and the targeting of investment in order to achieve its Carbon Neutral Pledge.

Relevance to the Council Plan

10. The energy efficiency upgrade works will support the priorities and principles contained in Councils Climate Action Plan to commence the decarbonisation of the Councils Housing stock.

Background

The Assessment Criteria included in the application for Phase 1B of the Local Authority Delivery scheme:

11. We plan to target 61 households that would benefit from energy efficient retrofit measures such as external wall insulation to existing solid walls, that currently have EPC ratings of D.
12. To help these homes move to C and above ratings, we will install external wall insulation. We are taking a fabric first approach as doing so reduces the energy needs of the property and will enable any low carbon heating and renewable measures to be more effective and efficiently sized to meet the needs of that insulated property.
13. Our ambition is that after the installation measures have been completed, all properties addressed in this project will improve their EPC rating to C or above. This will be measured by the Pre- and Post-EPC assessments.
14. We plan to use this LAD funding to target properties where our residents are most at risk of fuel poverty. These works target specific housing property types i.e solid wall construction and form part of the overall strategic objectives contained in Enfield's Climate Action Plan and Housing Asset Management and Sustainability Strategy.
15. To target these households as well as stock condition data in Apex we have also used existing housing benefit information held on the housing

- database Northgate and have for the purpose of this exercise included households who are in receipt of housing benefit and have a joint income of less than £30,000/year. We also have existing information on our housing stock and communities which we will reference to target households including a cluster map highlighting areas, of multiple deprivation and fuel poverty.
16. These households will all have EPC ratings of D with the potential to improve towards an EPC rating of band C or above. We will verify these EPC ratings by using a combination of stock condition surveys and registered EPC data. Of the 61 households targeted, early estimates demonstrate that the majority will improve to C as a result of the proposed measures.
 17. If there is no existing EPC at a property, we will undertake energy performance assessments to ensure these properties are in scope, ensuring there are clear Pre-EPCs and Post-EPCs once the retrofit measures have been installed.

The Memorandum of Understanding (MOU)

18. This Memorandum of Understanding describes the way BEIS and the LA will work together, the roles and responsibilities of both, and the understanding regarding the grant for LAD Phase 1B.
19. We are required by BEIS to review and return completed and signed, including any documentation and information requested in Appendix 1 of the MOU by 19th February 2021.
20. We have received prior Cabinet approval for the HRA 30 Year Business Plan 2020 and approval for the 5 year investment programme which was provided in January 2020 (KD4969) as such we have the relevant authority for a total spend of £245m within the 5 year programme for “Environmental improvements” and it has been identified that the capital expenditure for the deep retrofit works to the 36 properties will be funded from the 30 year Capital Programme at to the report which shows £2.5m under ‘Environmental Improvements’.
21. Advice has been sought from the Councils Legal Team and although it is acknowledged that monies have been moved around within the 5 year programme between years to consolidate the spend in 2021/22 to match fund these energy efficiency works, we are still within the agreed spend envelope. The reprofiling of the budget is approved.
22. The 61 properties that have been identified for the energy efficiency works fall within 5 Council Wards which are Southbury, Ponders End, Edmonton Green, Bush Hill Park and Cockfosters. Please see Appendix A for more details of proposed locations.

Main Considerations for the Council

23. The 61 properties that have been identified by Enfield Council to be put forward for retrofitting and the amount of funding that would be available for this from BEIS is £305,000.

24. Please find below table showing additional breakdown of information for the GHG LAD Phase 1B grant application.

Total project costs (including non-LAD funding).	Total LAD subsidy requested	LAD funded capital cost	LAD funded admin and ancillary		Number of homes upgraded	Average LAD subsidy cost of upgrades per home	Total Landlord / Local Authority contributions	Average Landlord/ Local Authority contribution per home
£1,310,000	£305,000	£305,000	£0	Owner occupier	N/A	£	£	£
				Privately rented	N/A	£	£	£
				Social tenure	61	£5,000	£275,000 (£580,000- £305,000)	£9,508

25. Enfield are required to match fund the difference. The match funding amount of £275,000 from Enfield shall come from 'Environmental Improvements' budget as detailed in the Cabinet report dated 28th January 2020 (HRA – 30 Year Business Plan 2020 (KD4969)).

26. Although the grant funding amount is £305k the Council have to match fund which takes the spend over £500k which constitutes a KD.

27. Due to time constraints imposed by BEIS the MOU needs to be signed and returned to BEIS by Friday 19th February and the 26th February 2021 at the very latest and it was not possible to give the required 28 day notice and include the decision on the Council's Key Decision List because of the tight timescale imposed by BEIS.

28. A Rule 16 decision has been authorised as due to the tight time constraints imposed by BEIS there is a real risk that the council will lose out on the funding available if the Memorandum of Understanding is not signed and returned within the specified timescales imposed by BEIS.

Monitoring

29. In adherence with the Memorandum of Understanding monitoring will be undertaken in accordance with Key Performance Indicators specified in the MOU to ensure the release of funding at the various critical stages.
30. The works are scheduled to be completed by 30th September 2021.

Safeguarding Implications

31. As with all projects involving council tenants, there are potential safeguarding implications for young people, children and vulnerable adults. These risks will be managed through normal housing capital works procedures (e.g. DBS checks for suppliers).

Public Health Implications

32. Our Joint Health and Wellbeing Strategy sets out how we will work with partners to make Enfield a place where people eat well and are active, smoke-free and socially connected.
33. Homes which are better insulated and require less energy and cost to heat are better for resident's health. Also, retrofit has the potential to address internal air quality, mould and damp health issues.

Equalities Impact of the Proposal

34. It is not envisaged that the strategy will have a negative impact but may have a positive impact in terms of fuel poverty and potential creation of jobs.

Environmental and Climate Change Considerations

35. The Council's Climate Action Plan has a target for existing housing stock to be brought up to an average of an EPC B rating by 2030. This reflects the significant impact that housing has on carbon emissions, making up around 38% of the borough wide total, while Council housing specifically accounts for around 38% of the organisation's Scope 3 emissions (those which are indirect but can be influenced).
36. The Government funding which has been secured will support the installation of external insulation to over 60 properties. This will have a positive impact on running costs and in use emissions. The impact will be monitored using SAP assessments both before (where these have not already been undertaken) and after. It is forecast that the works will move the properties from a current SAP D to at least a SAP C.

37. An important element of this work is being able to test new approaches so that the Council is in a position to better deploy resources and tailor future interventions to funding opportunities. Given that solid wall housing stock makes up a significant percentage of all London housing, it is also an important way to test specific measures to understand how they can be scaled up in the future, including identifying where there are challenges that need to be addressed, for example sector capacity for delivery at scale.
38. This complements other retrofit pilot schemes, including at Walbrook House in Edmonton and the delivery of an Energiesprong approach (this project is using a mix of Government funding and HRA) at a number of properties as part of a collaborative project. All of this will feed into the Retrofit London programme, for which the Council is joint lead borough alongside Waltham Forest, with its target of an average of EPC B or equivalent across all homes in London by 2030.

Risk Management

39. Risks that may arise if the proposed decision and related work is not taken

Risk Category	Mitigation
Strategic	<p>Risk: The Council does not deliver against the Climate Action Plan targets.</p> <p>Mitigation: By signing up to the Memorandum of Understanding and the energy efficiency works starts the Councils journey in achieving its long-term vision and ambitious target to reduce borough wide emissions.</p>
Financial	<p>Risk: Failure to sign up to the memorandum of Understanding will result in the missed opportunity of obtaining Government Funding and the commencement of energy efficiency works to residents and Council Housing that has been identified as being most in need of these works.</p> <p>Mitigations:</p> <ul style="list-style-type: none"> • Sign up to the Memorandum of Understanding and make best use of partnership opportunities and external funding streams. • Develop property type specific feasibility case studies to ensure all reasonable costs are captured. • Explore strategies to decrease the additional cost – such as using economies of scale in supply chain, funding and grants and setting the standards at the ‘launch’ of the project.

<p>Reputational</p>	<p>Risk: Failure to sign up to the Memorandum of Understanding when other LA Partners that have been successful in obtaining funding are progressing.</p> <p>Mitigation:</p> <ul style="list-style-type: none"> • Sign up to the Memorandum of Understanding and make best use of partnership and external funding streams, create employment opportunities in the supply chain and the delivery of works.
<p>Operational and financial</p>	<p>Risk: that the energy efficiency works are unsuccessful in reducing energy use or cause unforeseen issues for tenants</p> <p>Mitigation:</p> <ul style="list-style-type: none"> • Learn lessons from other local authorities that have obtained funding • Monitor implementation • Engage and brief residents early on, so they understand the works being undertaken <p>Risk: That insufficient progress is made within the required timescales regarding the attainment of financing; funding and skills to support programme delivery</p> <p>Mitigation:</p> <ul style="list-style-type: none"> • Create capacity within the Housing asset team to deliver the deep retrofit programme; • Share knowledge and expertise across council departments and the Sustainability Project Board. • Learn lessons from other local authorities in the same programme

Financial Implications

40. *As stated previously we have received prior Cabinet approval for the HRA 30 Year Business Plan 2020 and approval for the 5 year investment programme which was provided in January 2020 (KD4969) as such we have the relevant authority for a total spend of £245m within the 5 year programme for “Environmental improvements” and it has been identified that the match funding of capital expenditure for the energy efficiency works to the 61 properties will be funded from the 30 year Capital Programme at Appendix A to the report which shows £2.5m under ‘Environmental Improvements’.*
41. The match funding amount of £275,000 from Enfield shall come from ‘Environmental Improvements’ budget as detailed in the Cabinet report dated 28th January 2020 (HRA – 30 Year Business Plan 2020 (KD4969)).

Legal Implications

Legal Implications provided by MP on 31st December 2020 based on version of report circulated on 23rd December 2020.

Legal implications: Further comments and amendments provided on report by SM on 5th January 2021 on the version of the report emailed to SM by MP on 31st December 2021.

42. S.1 Localism Act (2011) provides the Council with the power to do anything an individual may do, subject to certain limitations. This is referred to as the "general power of competence" (GPOC). A local authority may exercise the GPOC for its own purpose, for a commercial purpose and/or for the benefit of others. This GPOC provides sufficient power for the Council to enter into the collaboration agreement with the BEIS.
43. Under s.111 Local Government Act (1972) local authorities may do anything, including incurring expenditure or borrowing which is calculated to facilitate or is conducive or incidental to the discharge of their functions.
44. The Council's Legal Services department has formerly advised that although monies have been moved around within the 5-year programme (consolidation of spend to fund the pilot of this project) spend is still within the agreed annual spend envelope. Therefore, relevant authority to proceed, at this point of the project, remains. Providing the Council's Finance dept. has approved the reprofiling of the budget and is content there is adequate budgetary provision for the retrofit project (and in particular the receipt of the grant monies and the match funding needed, as outlined in this report) then this project may proceed (as authorised under cover of this report).
45. Given the imminent changes surrounding the application of state aid rules come 1st January 2021, by entering into the Memorandum of Understanding, the Council is expected to adhere and ensure that at all times, the project is compatible with EU state aid rules (where applicable) **or** relevant subsidy control system rules which shall apply in domestic UK law from 1st January 2021. Prior to committing funding as part of the delivery of this project, the Council is also expected to assess compliance with the EU state aid rules (where applicable) **or** relevant applicable subsidy control system rules (or equivalent) in force domestically from 1st January 2021.
46. The Council will need to further ensure that any funding received, is utilised in accordance with all applicable terms and conditions to the arrangement otherwise, the BEIS has made it abundantly clear that misuse could result in a request of repayment of such sums (along with potentially having to pay interest on the same).
47. This report constitutes a Key Decision (KD). A KD is defined as a proposal that involves expenditure/savings of £500,000 or above (including

proposals phased over more than one year) and match/grant aided funding with a total of £500,000 or above; and/or which has significant impact on the local community in one or more wards.

48. The Council's Constitution requires that 28 days' notice of all key decisions due to be taken by the Council must be provided in advance of that decision being taken. **In exceptional or urgent cases**, if it is not possible to meet this requirement, there are 2 procedures that can be followed to enable the decision to still be taken. These are referred to within the Constitution as the Rule 15 and Rule 16 procedures. The Council is seeking to follow the **Rule 16** procedure of the Constitution in this instance and any decision made following review of this report will be subject to call-in.
49. The Council must ensure that all guidance available to it regarding this scheme is adhered to at all times and it must further ensure that all legal agreements entered into in consequence of the approval of the proposals set out in this report, are in a form approved by the Director of Law and Governance, ahead of commencement.
50. The Council's Contract Procedure Rules (CPRs) apply to the procurement by the Council of works, supplies and services however the CPRs *may* also apply to contracts that are entered via other means such as grant agreements (CPRs s.2.1).
51. Although unconditional grants are unlikely to meet the definition of a 'contract' in line with procurement regulations, it is not so plain sailing for conditional grants. Where grants are used with strict qualification criteria and include (for example) an obligation to pay back money if certain targets are not reached, the position is less straightforward. It is possible that an arrangement referred to as a 'grant', could actually meet the definition of a 'contract' as set out in the Public Contract Regulations (2015) (PCRs (2015)) and, if it does, the Regulations *may* apply.
52. The Council is expected to consider the retrofit project as a whole and even if the Council's CPRs / the *PCRs (2015)* are deemed not to apply to the funding agreement, the manner in which such funding is spent **will** be subject to the Council's CPRs (and where relevant, the PCRs (2015)).
53. The Council must ensure that when calling off suppliers from any frameworks that all framework rules and terms are complied with at all times. Further, any future procurements to be carried out for the retrofit project, must be done so in accordance with the Council's Constitution, its Contract Procedure Rules and to the extent that the PCRs (2015) shall apply, in accordance with such Regulations also.
54. In light of Brexit and the upcoming changes to the way the PCRs (2015) will apply to procurements going forward, the Council must also be mindful of the following:

- any procurement started, and not completed before 31 December 2020, will be subject to the current procurement regulations until the contract has been awarded;
- From 1st January 2021, the new e-tender service 'Find a Tender' will replace the Official Journal of the European Union in the UK for above threshold tenders.
- The existing UK government portal – “Contracts Finder” (for the UK) will remain in operation and will be unchanged.
- While there will be no immediate changes to procurement policies, from 1st January 2021 the government will have the power to introduce new or temporary legislation.

The Council must ensure throughout the lifetime of this project, that it remains well-informed of all updates regarding changes to applicable laws, regulations and policies (as a result of Brexit) seeking advice and guidance as and when required from the Council's Procurement & Commissioning Hub and Legal Services.

Workforce Implications

- 55. There are no immediate implications and no redundancies. The Housing Capital Programme team will need to gear up to support this programme.

Property Implications

- 56. Contained within the body of this report.

Other Implications

- 57. None

Options Considered

- 58. To not sign the Memorandum of Understanding and miss out on £305,000 of grant funding to improve the energy efficiency of homes for residents.

Conclusions

- 59. By signing up to the Memorandum of Understanding the Council will be in receipt of Central Government funding that will contribute towards the overall aims and objectives of Enfield Council's Housing Asset and Sustainability Strategy 2020-2050, which sets out our strategic approach to the investment in council homes over the long term. This also supports the delivery of Enfield Council's Housing and Growth Strategy 2020-2030 and specifically the objective of “Investing and being proud of our Council homes” and the delivery of the Councils Climate Action Plan.

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Date of report 18th February 2021

Appendix A – Summary of Property Locations

Confidential Appendix – Memorandum of Understanding