

# Birmingham City Council

## Report to Cabinet

27<sup>th</sup> June 2023



**Subject:** Development of Housing at Yardley Brook – Scheme Update and Revised Full Business Case (FBC)

**Report of:** Paul Kitson, Strategic Director, Place, Prosperity & Sustainability Directorate

**Relevant Cabinet Member:** Cllr John Cotton, Leader  
Cllr Jayne Francis, Housing and Homelessness  
Cllr Brigid Jones, Finance and Resources

**Relevant O &S Chair(s):** Cllr Sir Albert Bore, Co-Ordinating  
Cllr Mohammed Idrees, Homes  
Cllr Jack Deakin, Resources

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Glebe Farm & Tile Cross		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference – 011285/2023		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential: Exempt Appendix A contains sensitive commercial information Exempt information Schedule 12A of the Local Government Act 1972 (as amended) paragraph 3. Information relating to the financial or business affairs of any particular person (including the council)		

## **1 Executive Summary**

- 1.1 The report seeks to provide members with an update on the progress of the scheme and to obtain approval to a revised Full Business Case (FBC) for the construction of 298 new homes at Yardley Brook (the Scheme).

## **2 Recommendations**

That Cabinet

- 2.1 Approves the revised FBC attached to this report as Exempt Appendix A for the Scheme and delegates any changes to the FBC for the Scheme financial expenditure of up to 20% to the Strategic Director, Place, Prosperity & Sustainability.
- 2.2 Notes that the financial details of the scheme are contained within the Exempt Appendix A.
- 2.3 Approves the modification to the contract by increasing the financial value of the contract with Jessup Brothers Ltd for the construction of 298 new homes at Yardley Brook.
- 2.4 Authorises the City Solicitor and Monitoring Officer (or their delegate) to take all steps necessary for the preparation of any documents, to negotiate, execute and complete all necessary documentation to give effect to the above recommendations.

## **3 Background**

- 3.1 The original procurement strategy and Full Business Case was approved by Cabinet on 12 December 2017; in a report entitled Driving Housing Growth – Full Business Case (FBC) for the development of housing at Yardley Brook.
- 3.2 The planning application for the development of 298 new homes was approved by Planning Committee on 04 July 2019, reference number 2018/05758/PA. The award of contract to Jessup Brothers Ltd following a further competition exercise using the Homes England Delivery Partner Panel 3 (DPP3) Framework Agreement for the construction of 298 new homes for rent (150) and sale (148) was approved by the Cabinet Members for Homes and Neighbourhoods and Finance and Resources in a report entitled 'Contract Award for the Yardley Brook Housing Development' on 2 December 2020'.
- 3.3 The contract award was approved by Cabinet on 2 December 2020 was for the estimated value of £30,215,000. However, for a variety of reasons as outlined below, the commencement of the construction has been delayed. This has resulted in an increase in costs, hence the need to seek a revised Cabinet approval.
- 3.4 The Council has secured £8.856m grant funding from Homes England of £4.47m and West Midlands Combined Authority of £4.386m to remediate the land. The

grant support from WMCA is the subject of a recently revised application for funding via Brownfield Land Property Development Fund. The WMCA Investment Board took the decision in October 2022 to lapse the current grant agreement with the Council as the original terms could not be met, hence the need to re-apply back in January 2023. The main reason being that the Environment Agency were unable to approve the proposed remediation strategy, thus the Council and Jessup Brothers Ltd were unable to finalise its contractual negotiations and commit to a commencement on site. A lengthy process of reviewing the remediation strategy has subsequently taken place, which has only recently been concluded. The WMCA Investment Board at its meeting on 27<sup>th</sup> March 2023 recommended that the grant allocation of £4.386m remains ring-fenced to the Council until the end of July 2023 only, subject to a satisfactory update report being delivered to the Investment Board, with the following 5 preconditions being met; these are as follows.

- Written Environment Agency approval to the remediation strategy and tax position.
- The Council's Cabinet approval to fund the increased costs including any tax liability as appropriate.
- That a suitable contract is in place to complete the remediation, with a start on site having been achieved by 31<sup>st</sup> July.2023.
- Full clarity of the contract with Jessup Brothers Ltd as the main contractor and development partner.
- The Council to remain liable for delivery and clawback of the grant if any of the conditions are not met.

### **3.5 Scheme Review**

- 3.5.1 The contract was awarded based on the delivery of 298 homes, being 150 for social rent to BMHT and a further 148 units being for Jessup to market and sell with a fixed land value being returned to BCC for those units. Since the contract was awarded the housing market has moved and construction costs have escalated, whilst at the same time house prices have also increased.
- 3.5.2 Over the period from November 2020 to the present, costs have increased faster than the sales values, and there is increasing uncertainty in the housing market. To mitigate this risk and to introduce alternative affordable housing tenure types into this large site, Jessup in conjunction with Arcadis, approached Midland Heart Housing Association to ascertain their appetite to take some of the 148 market sale homes. As a result, heads of terms are currently being agreed between Jessup and Midland Heart, for the acquisition of 97 homes by Midland Heart to offer as affordable homes, with 62 of these being for Affordable Rent and 35 being for Shared Ownership.
- 3.5.3 This revised scheme working in partnership with Midland Heart Housing Association aligns with the recently adopted Housing Strategy which promotes

working more closely with Registered Providers to accelerate the delivery of affordable housing across the city. This increases the total number of affordable homes on the development to 247 which is 83% of the entire site, but this now provides additional tenure types, with 3 affordable tenures now available.

- 3.5.4 Overall, the scheme will now provide 150 homes for Social Rent (50%), 62 homes for Affordable Rent (21%), 35 homes for Shared Ownership (12%) and 51 homes for Open Market Sale (17%).

### **3.6 Revised Remediation Strategy**

- 3.6.1 As part of the comprehensive scheme review the opportunity was taken to review the previously proposed remediation strategy. This was undertaken following dialogue between the Council's technical advisor, Arcadis Consulting (UK Ltd and the Environment Agency (EA) regarding the previous remediation strategy and to seek the EA's approval to the methodology.
- 3.6.2 Changes in personnel at the EA and an escalation to the national team as opposed to the regional team resulted in the EA advising that they would be unlikely to approve the previous strategy which involved relocation of the material on site, in addition it was ascertained that by moving the material the EA would be seeking to apply land fill tax to the material as if it had been moved off site.
- 3.6.3 As a result, the consulting engineers, in liaison with the ERA, prepared an alternative remediation strategy which would retain the material in situ and treat it on site, this would avoid any land fill tax and would be more environmentally friendly. This resulted in a significant uplift in cost due to the change in methodology of remediating the site, but the revised method was necessary to seek to secure full approval from the EA and avoid any potential land fill taxation charges. The imposition of any landfill taxation charges would result in a further increase in costs to the revised remediation strategy.

### **3.7 Building Regulation Changes (Part L)**

- 3.7.1 The Jessup tender response and pricing was based on regulations current at the time of the award and as result of the delays to the project several changes took place to the Building Regulations, specifically to Part L and relate to reducing carbon emissions. The implication of this is that there are new fabric efficiency standards introduced with u value reductions resulting in more energy efficient design and increased thermal insulation in a range of elements.
- 3.7.2 Alongside this is a reduction of 30% per dwelling in carbon emissions and a move towards timber frame, fabric improvements and solar panels to meet these targets. As the project did not commence before the introduction of these new regulations it has been necessary to agree an uplift with Jessup for these new improved energy standards. The additional cost of achieving Part L is referenced in the Exempt Appendix.
- 3.7.3 The proposed uplift has been reviewed by Arcadis and found to be below the average cost uplifts found on other similar projects and are at the lower end of

their benchmark data for these specification changes and as such represent value for money to BMHT. It should also be recognised that whilst this is an additional cost to BMHT and the HRA, it will assist residents with their overall cost of living by reducing their energy bills as well as representing a proactive approach to developing a specification that assists BCC in meeting its Net Zero target for its overall stock performance.

### **3.8 Performance Guarantee Bond**

- 3.8.1 Jessup's tender response contained a Parent Company Guarantee in lieu of a Contract Guarantee Bond and after discussion, it was decided that, given the volatility of the market, an independently backed performance guarantee bond would offer the Council an improved level of security with additional costs resulting.

### **3.9 Inflationary Cost Increases**

- 3.9.1 Since the contract was awarded in November 2020 the market has seen unprecedented price increases in material costs and in the labour market. With the delays to the project, it has been necessary to agree an uplift in the tender price with Jessup. The industry standard is to use one of the indices produced by the Building Cost Information Service (BCIS).

### **3.10 Value Engineering**

- 3.10.1 As part of the project review the opportunity was taken to work with Jessup to identify potential areas of cost reduction. The opportunity was taken to review the specification and to identify areas where cost reductions could be made by way of value engineering, this being by delivering the same standard of product etc in a more efficient way, or via an alternative manufacturer or supplier. As a result, a series of items have been identified to reduce the cost, including alternative bricks and windows. The reduction in costs associated with the various items proposed is referenced in the Exempt Appendix. The specification amendments require finalisation and discussion between all stakeholders, including the planning team.

## **4 Options considered and Recommended Proposal**

- 4.1 To approve the revised FBC and increase in contract value which will enable the Development Agreement to be signed and the construction to commence. With resources for the development being made available through the Housing Revenue Account (HRA) business plan. This is the recommended proposal.
- 4.2 To do nothing – this option would not enable the scheme to contribute to the Council's policy for Route to Zero, to increase the supply of new homes for the city and also the BMHT 10-year delivery plan.

## **5 Consultation**

- 5.1 N/A

## **6 Risk Management**

6.1 Please see Appendix B, Risk Register.

## **7 Compliance Issues**

### **7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?**

7.1.1 The Scheme supports the Council's Route to Zero Strategy approved by Cabinet in January 2021. The strategy commits to reducing the city's carbon emissions and limit the climate crisis.

7.1.2 The Scheme is in accordance with the objectives of the housing revenue account (HRA) Business Plan 2023+.

7.1.3 The Scheme will make a direct contribution and is consistent with The Council's Corporate Plan 2022 to 2026 main priorities (as updated in Dec 2022) priorities and outcomes as outlined below:

- A Bold Prosperous Birmingham: The Council is committed to the development of enough high-quality new homes to meet the needs of a growing city, and the proposals within this report to accelerate housing growth in the city by providing new homes for rent and will help ease pressure on the housing register.
- A Bold Green Birmingham: the new homes will be built to a high standard of energy efficiency by using the latest technologies and use a range of measures to improve the environment and tackle air pollution by using cleaner technologies and building energy efficient homes.
- A Bold Inclusive Birmingham: the new social housing will be available to any applicant on housing register.
- A Bold Healthy Birmingham: the links between health and housing are well recognised. New thermally efficient, economical to run new homes which are designed to high standards of quality and internal space standards will provide social rented housing for residents and offer a higher quality of life, leading to better health outcomes.
- A Bold Safe Birmingham: new homes will be developed which will provide a safe, warm, sustainable, and connected neighbourhood in which all communities can thrive.

#### **7.1.4 Birmingham Business Charter for Social Responsibility (BBC4SR)**

Jessup Brothers Ltd is an accredited signatory to the BBC4SR and has produced additional commitments to their action plan proportionate to the increase in the value of this contract. The commitments will be managed and monitored during the contract period

## **7.2 Legal Implications**

- 7.2.1 As the Housing Authority, the relevant legal powers relating to the discharge of the Council's statutory function to provide its housing need are contained in Sections 9 and 13 of the Housing Act 1985.
- 7.2.2 Section 123 of the Local Government Act 1972 authorise the Council to dispose of land. The disposal power in Section 123 of the Local Government Act 1972 is subject to the best consideration test.
- 7.2.3 Section 32 of the Housing Act 1985 authorises the Council to dispose of any land held for the purposes of Part II of the Housing Act 1985 in any manner but only with the consent of the Secretary of State. The Secretary of State has issued the General Housing Consents 2013 (issued March 2013 and corrected July 2013) which set out the circumstances where such disposals can take place without the need for specific consent from the Secretary of State, including circumstances such as disposals of vacant land, disposals at market value and disposals of reversionary interests in houses and flats.
- 7.2.4 Section 1 of the Localism Act 2011 contains the Council's general power of competence which is circumscribed only to the extent of any applicable pre-commencement restrictions and any specific post-commencement statutory restriction of that power; Section 111 of the Local Government Act contains the Council's subsidiary powers in relation to the discharge of its functions including the expenditure of money and the disposal and acquisition of property.
- 7.2.5 The Council carries out transportation, highways and infrastructure work under the relevant primary legislation including the Town and Country Planning Act 1990, Highways Act 1980, Road Traffic Regulation Act 1984, Traffic Management Act 2004, Transport Act 2000, and other related regulations, instructions, directives, and general guidance, and the Highways Act 1980 contains the highway closures and diversion
- 7.2.6 BMHT will enter a memorandum of understanding with the Local Highway Authority to facilitate the improvement of new and existing areas of highway maintainable at public expense, that will be affected by the development proposals.

## **7.3 Financial Implications**

- 7.3.1 The total estimated cost of the proposed scheme is £41.73m. This figure includes planning obligations, by way of a Public Open Space contribution at a minimum level of £900,000 of the estimated total scheme cost. The scheme will be funded from HRA revenue contributions, and 1-4-1 Right to Buy receipts, except for the contributions from WMCA and Homes England totalling £8,856,000

toward the cost of remediating the site. The cost of development is included in the HRA Business Plan 2023+.

7.3.2 The average build cost per unit for this scheme is £192,826

7.3.3 The financial viability of the scheme is attached at Exempt Appendix A Full Business Case. The scheme achieves a break-even position in year 27.

7.3.4 The financial viability of the Scheme proposal is based on the Government's social housing rent policy that rents will increase annually by the Consumer Price Index (CPI) + 1 % over a 5-year period from 2020/2021.

7.3.5 The future running costs of the properties and areas of public realm retained will be met from ongoing rental income.

7.3.6 The new Council rented homes will be subject to the Right to Buy cost floor regulations, which mean that for the first 15 years following the completion of the new homes, any tenant purchasing their Council property through the Right to Buy will be obliged to pay the Council the full construction cost of the property, irrespective of any discount to which they may be entitled under the Right to Buy legislation.

7.3.7 The construction of the new Council homes should not be liable to VAT; however, VAT may be payable on other project costs. The letting of HRA homes is non-business as are sales of such homes under Right to Buy. The Council can reclaim VAT incurred on the development and management of HRA homes, including sales under Right to Buy. Therefore, VAT should not be a cost to the project. VAT implications are detailed in the Full Business Case in Exempt Appendix A.

## **7.4 Procurement Implications**

7.4.1 This contract modification is in accordance with the Council's Procurement and Contract Governance Rules item 4.36(ii).

7.4.2 Regulation 72(1)(c), Modification of Contracts During their Term, of the Public Procurement Regulations (PCR) 2015, allows provision for contracts to be modified without the need for a new procurement procedure where all the following conditions are fulfilled:

- i. the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen.
- ii. the modification does not alter the overall nature of the contract.
- iii. any increase in price does not exceed 50% of the value of the original contract.



7.4.3 The contract modification is compliant with PCR 2015, Regulation 72(1)(c) on the basis that the modification was unforeseen as described in paragraph 3.4 above, does not alter the overall nature of the contract and the increase in price does not exceed 50% of the value of the original contract.

7.4.4 Since the award of the contract, Jessup Brothers Ltd has provided a satisfactory service with the preparatory work and services prior to the formalisation on the contract,

## **7.5 Human Resources Implications (if required)**

7.5.1 The scheme will be staffed by the Housing Development team (Place, Prosperity & Sustainability Directorate) with support from the scheme's Employers Agent, Arcadis (UK) Ltd.

## **7.6 Public Sector Equality Duty**

7.6.1 An Equality Impact assessment, Ref: EQUA959 was undertaken as part of the 12 December 2017 report to Cabinet and the same continues to apply. A copy of the completed assessment is included at Appendix D for completeness.

## **8 Appendices**

8.1 Exempt Appendix A

8.2 Appendix B – Risk Register.

8.3 Appendix C – Environmental and Sustainability Assessment

8.4 Appendix D – Equality Impact Assessment

## **9 Background Documents**

9.1 Cabinet on 12 December 2017; in a report entitled Driving Housing Growth – Full Business Case (FBC) for the development of housing at Yardley Brook

9.2 Contract Award for the Yardley Brook Housing Development to Cabinet 2 December 2020.

## Appendix B Risk Register

Risk No	Risk description	Risk mitigation	Residual / current risk			Additional steps to be taken
			Likelihood	Impact	Prioritisation	
1.	Supply of labour and materials	Continual monitoring of the latest situation. Review contract terms and conditions to ensure relevance. Seek to transfer risk of cost increase to third parties e.g. contractor.	Medium	Significant	<b>Material</b>	Regularly review the situation.
2	Costs increase during construction period due to worldwide market conditions.	A fixed price contract has been agreed with the contractor which should mitigate the potential for any cost increase.	Medium	Medium	<b>Material</b>	Costs continually reviewed in conjunction with project team.
3.	Planning / Highways Approval Delays.	Development and Planning Teams work more closely together on scheme design and objectives.	Low	Medium	<b>Tolerable</b>	Review monthly and escalate earlier if necessary.

## Appendix C – Environmental & Sustainability Assessment

<b>Project Title:</b>	<b>Yardley Brook</b>			
<b>Department: Place, Prosperity &amp; Sustainability</b>	<b>Team: Housing Development Team</b>		<b>Person Responsible for assessment: Paul Wootton</b>	
<b>Date of assessment 19/04/2023</b>		<b>Is it a new or existing proposal? Existing</b>		
<b>Brief description of the proposal: 150 new homes for social rent</b>				
<b>Potential impacts of the policy/development decision/procedure/ on:</b>	<b>Positive Impact</b>	<b>Negative Impact</b>	<b>No Specific Impact</b>	<b>What will the impact be? If the impact is negative, how can it be mitigated, what action will be taken?</b>
Natural Resources- Impact on natural resources including water, soil, air	✓			The development will incorporate a range of measures to ease the run-off from the site to reduce potential flooding including attenuated pipes, dry swales as approved by the LLFA.LLFA.
Energy use and CO <sub>2</sub> emissions	✓			All properties will be built to the new Part L building regulation, which improves the energy efficiency of the building. The homes will also be constructed using modern method of construction (timber frame) which has a lower energy use compared to traditional brick and block construction.  In addition, all houses will have their own electric vehicle charging points.
Quality of environment	✓			The design of the scheme will provide a quality aesthetic which is sympathetic to the surrounding locality with the formation of a new community with a mixed tenure model, having the benefit of open space, within the site. All properties will be subject to detailed landscaping proposals.
Impact on local green and open spaces and biodiversity	✓			The development will incorporate a large area of public open space, which will be designed in a way to provide residents

				with suitable access. This space will feature, shrubs, etc. which will harness and improve biodiversity
Use of sustainable products and equipment	✓			<p>All materials that are used within the development will be sourced, where possible, with the use of local suppliers (within a 30 miles radius) as part of the social value agenda. In addition to the measures detailed above, the following are also included within the scheme:</p> <ul style="list-style-type: none"> <li>• Timber frame construction.</li> <li>• Recycled timber within the kitchen units. Recycled bat and bird boxes from site worn material.</li> <li>•</li> </ul>
Minimising waste	✓			<p>The contractor will be using segregated waste and disposal bins on site with all waste transfer notes kept on site and available for inspection.</p> <p>Re-cycling of materials will be maximised with waste to landfill being zero, with KPI's reported monthly.</p> <p>. Contractor will be ISO 14001 accredited for the protection of the environment and operate with an environmental policy statement. Large construction plant(s) will not be idling when not in use.</p> <p>The contractor will also engage with a waste management company with whom they have a partnership and will incorporate initiatives such as using recycled timber from the site to provide bat boxes, bird boxes, benches etc.</p>
Council plan priority: a city that takes a leading role in tackling climate change	✓			The site is a key output for the delivery of affordable housing and regeneration of the community.
Overall conclusion on the environmental and sustainability impacts of the proposal	The proposal provides 298 much needed houses for the local community, which comprises of 150 units for BMHT, 97 units of additional affordable homes for a registered provider, all including the new Part L building regulations which supports the improvement on the energy efficiency of the houses. The wider environment will benefit from the use of landscaped public open space which will include shrubs and planting. which will harness and improve biodiversity and will help local communities to thrive.			