

# Birmingham City Council

## Report to Cabinet

22<sup>nd</sup> March 2022



**Subject:** Birmingham Museum and Art Gallery – MEND Grant

**Report of:** Rob James, Managing Director, City Operations

**Relevant Cabinet Member:** Councillor Tristan Chatfield, Cabinet Member Finance and Resources  
Councillor Jayne Francis, Cabinet Member Education, Skills and Culture

**Relevant O &S Chair(s):** Councillor Mohammed Aikhlaq, Resources  
Councillor Mariam Khan, Commonwealth Games, Culture and Physical Activity

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Are specific wards affected? Ladywood	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
Is this a key decision? If relevant, add Forward Plan Reference: 009688/2022	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, provide exempt information paragraph number or reason if confidential : Paragraph 7.3.4 Exempt Appendix 1	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

## **1 Executive Summary**

- 1.1 A Historic England report states Birmingham Museum and Art Gallery (BMAG) “is in poor condition such as it would warrant inclusion on the Heritage at Risk Register”. The proposal addresses some of the required works to make it fit for purpose, protecting the collections it holds.
- 1.2 The report seeks approval to the Outline Business Case (OBC) Appendix 2 to progress the development and design works. Thereafter a report will be presented to Cabinet to approve the Full Business Case and award of contract to enable the works to commence.
- 1.3 The report seeks approval to the procurement strategy and commencement of the activity for the refurbishment works using Acivico Ltd’s Constructing West Midlands 2 (CWM2) Framework Agreement.

## **2 Recommendations**

That Cabinet:

- 2.1 Approves the OBC in Appendix 2 for the refurbishment works at Birmingham Museum and Art Gallery at an estimated total capital cost of £4.9m inclusive of works, fees and contingencies.
- 2.2 Authorises the Managing Director, City Operations to instruct Acivico Ltd to progress the project proposal to RIBA Plan of Work to Stage 4 (Technical Design) at a cost not to exceed £0.380m (inclusive of a contingency).
- 2.3 Approves the award of contract to ISG Construction Ltd for the refurbishment works by direct award using Constructing West Midlands 2 (CWM2) Framework Agreement to RIBA Plan of Work to Stage 4 (Technical Design) stage noting that the award of the construction contract will be reported in the Full Business Case proposed to be presented to Cabinet in November 2022.
- 2.4 Authorises the Acting City Solicitor and Monitoring Officer to negotiate, execute and complete all necessary documents to give effect to the above recommendations.

## **3 Background**

- 3.1 BMAG is a Grade II\* listed building and consists of the 1885 galleries (entrance, Round Room, cafe, Industrial Gallery, balcony galleries, shop) which are linked by a bridge (Link Bridge) to the rest of the building which consists of the Council House Extension (CHE) Galleries, back of house spaces, workshops, fine art stores, and the Gas Hall exhibition space.
- 3.2 The BMAG and community museums are managed by the Birmingham Museum Trust (BMT) which was set up in 2012 as an independent charity to manage the city’s museum collections and buildings. The Council has a 25 year service contract with BMT (with ancillary property leases) for the provision of museum services.

- 3.3 In May 2021, the Department of Digital, Culture, Media and Sport (DCMS) published application details for a capital fund with individual awards of up to £5m to support 'vital and urgent' repairs to museums and heritage buildings - the Museum Estate and Development (MEND) fund. Arts Council England (ACE) will process and administer applications to this fund with assistance from Historic England who will be visiting sites, scrutinising applications and making recommendations for awards to ACE.
- 3.4 A Cabinet report was approved on the 7<sup>th</sup> September 2021 to submit a grant application for the MEND fund. Capital funding in the sum of £11.1m previously approved at Cabinet on the 18<sup>th</sup> May 2021 as part of the budget for the 'Council House Complex Electrical Upgrade and Refurbishment Works' has been used as matched funding to support the submission.
- 3.5 In October 2021 the Council in partnership with BMT submitted a grant application for £4.9m. The grant will fund works within BMAG associated with the following:
- Accessibility – lift repairs/replacement to the public lift on Edmund Street and the goods lift on Margaret Street.
  - Fabric longevity – replace water damaged plaster and paint work and roof works to the 1885 and Council House extension roofs.
  - Upgrading building services – upgrade the heating systems to the 1885 building, link bridge and Council House extension and the upgrade of the mains water inlet/outlet valve.
  - Fire protection – upgrade fire doors and other fire protection works.
- 3.6 The grant application was approved in February 2022. On receipt of Cabinet approval of the Outline Business Case and a positive response from the Department of Media, Culture and Sport (DCMS) the proposal will progress with the commencement of RIBA Stage 4 design in April 2022 and be completed by July 2022, allowing for the contract sum to be finalised by August 2022. A report to approve the Full Business Case and award of contract is due to be presented to Cabinet in November 2022. Work are programmed to commence on site in January 2023 with completion anticipated for February 2024.
- 3.7 BMAG will reopen those elements within the Council House block to the public on a reduced scale from late April 2022. However, those elements within the Council House Extension will currently not be available until the completion of the electrical refurbishment programme in Summer 2023. Due to the scope of works included in this proposal i.e. roof and high level plaster repairs/replacement which will require internal scaffolding it is not possible to allow the public in to these areas for health and safety reasons and it therefore makes sense to limit impact on the public to undertake these works whilst the facility is closed for other refurbishment activity.

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

- 4.1 Do nothing and not to accept the grant– this would result in the building (Grade II\* listed) deteriorating further and putting the building and collections at considerable risk. Doing nothing now will lead to escalating costs in the future to address the works.
- 4.2 To accept the grant - this is the recommended proposal to accept the grant and progress the works
- 4.3 Alternative procurement options are in paragraph 7.4.

## **5 Consultation**

- 5.1 The Leader of the Council and relevant Ward Members have been consulted on this proposal and support it going forward to the next stage of development.
- 5.2 The report and OBC was presented to Capital Board on the 9<sup>th</sup> February 2022 who supported the proposal being progressed.
- 5.3 Consultation has been carried out with customers to inform them of the timetable, scope of works to be carried out and alternative service provision during the temporary closure of BMAG.
- 5.4 Birmingham Museums Trust trustees, Birmingham Civic Society, Birmingham Heritage Strategy Group and Friends of Birmingham Museums have all been consulted on the proposal and are all fully supportive.
- 5.5 Arts Council England and Historic England officers have been consulted regarding formal advice and guidance on the MEND Fund.

## **6 Risk Management**

- 6.1 A risk register is appended to the Outline Business Case Appendix 2.
- 6.2 The main risk to the project at this stage is whether the budget will be sufficient to address all the priorities in the MEND grant award. The building is grade II\* and works need to be in keeping with its listed status. If this is the case an informed decision will be made to what works can be progressed within the constraints of the budget. A contingency has been included within the cost plan.

## **7 Compliance Issues:**

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

- 7.1.1 The proposal supports the Birmingham City Council Plan 2018-2022 (as updated in 2019) by contributing to the Council's Key Priorities, specifically; Outcome 1 Birmingham is an entrepreneurial city to learn, work and invest in – the grant will allow investment in one of the city's flagship facilities and provide local employment opportunities. Outcome 4 Birmingham is a great, clean and green city to live in - the proposed application will be developed in conjunction with

Birmingham Museums Trustees, staff and Friends. The repair and continued operation of this internationally significant building will have a positive impact on the City's profile nationally and internationally with the potential to support the City's growing reputation as tourist destination

- 7.1.2 These building improvements will support the delivery of museum services that benefit the citizens of Birmingham and other stakeholders. We will be looking for sustainable design solutions to evidence that Birmingham takes a leading role in tackling climate change.
- 7.1.3 It also supports the Property Strategy 2018/19 – 2023/24 by improving a Grade II\* listed asset, providing “fit for purpose” property which meets modern standards and service specific defined objectives, specifically working towards ensuring the asset is operationally efficient.
- 7.1.4 Birmingham Business Charter for Social Responsibility (BBC4SR)  
ISG Construction Ltd will be required to become an accredited signatory to the BBC4SR and will be required to produce an action plan with commitments relevant and proportionate to the value of the proposed contract as part of the work to deliver RIBA Stage 4. Outcomes including employment, local supply chain commitments, training and engagement events in schools in the Ladywood ward and surrounding areas will be required. Further detail will be provided in the Full Business Case and Contract Award due to be presented in November 2022.

## **7.2 Legal Implications**

- 7.2.1 The Council has a best value duty under the Local Government Act 1999 to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of efficiency, economy and effectiveness.
- 7.2.2 This report exercises powers contained within the Public Libraries and Museums Act 1964 by which the local authority for the area is under a duty to provide and maintain museums and art galleries.
- 7.2.3 The Council has a duty under the Occupiers Liability Act 1957 to take such care as in all the circumstances of the case is reasonable to see that visitors will be reasonably safe in using the Council's premises for the purposes for which they are invited or permitted by the Council to be there
- 7.2.4 Under Section 145 of the Local Government Act 1972 the Council may do, or arrange for the doing of, anything necessary or expedient for the provision of entertainment of any nature, the provision of a theatre, development and improvement of the knowledge, understanding and practice of the arts and the crafts which serve the arts and any purpose incidental to the matters aforesaid.

### **7.3 Financial Implications**

- 7.3.1 The estimated total capital cost of the proposal is £4.9m (inclusive of fees and contingency). This is to be funded from the MEND grant.
- 7.3.2 A sum of £0.087m has been spent to progress the proposal to RIBA Stage 3 which was a requirement of the MEND grant application. This has been funded from the Museums revenue budget.
- 7.3.3 A breakdown of costs is included within Exempt Appendix 1.
- 7.3.4 The completed scheme is expected to yield revenue savings yet to be qualified, from reduced repairs to BMAG. The replacement of the roofs and rainwater goods including improved access will allow for annual maintenance to be carried out. Improvements to the heating system will ensure the internal environment is conducive to the collection it holds.
- 7.3.5 Under the terms of the lease agreements and service contract with BMT, the Council retains responsibility for repair and maintenance of the external fabric of the nine heritage sites owned by the City with BMT remaining responsible for majority of internal R&M obligations (there is joint liability for repair / replacement of access lifts). The Cultural Development Service manages the service contract and retains a small annual budget to contend with R&M issues across the nine sites including BMAG. This budget will be fully spent in 2021-22 and will be prioritised next year following results from Full Condition Surveys of all sites.

### **7.4 Procurement Implications (if required)**

- 7.4.1 The proposed route is to use Acivico Ltd's CWM2 Framework Agreement. The Council is entitled to access this Framework Agreement. The Council, in collaboration with Acivico Ltd, are involved in selecting the most appropriate contractor for the project based on a price, quality and social value matrix as provided for in the Framework Agreement. The Council can amend clauses or add clauses to the call off contract specific to the project. Alternative frameworks agreements were considered. However, they tend to be single contractor led which does not provide the competitiveness required to evidence best value.
- 7.4.2 The rules for calling off is either to undertake a further competition exercise or a direct award. There is not sufficient time within the timeframe for spending the grant as stated in its conditions to carry out a further competition exercise and deliver the works on site. The recommended route for these works is, therefore, to award a contract up to the end of RIBA Stage 4 by direct award to ISG Construction Ltd in accordance with the framework procedure.
- 7.4.3 An option considered was for a contract variation for the Council House Complex Electrical Upgrade and Refurbishment Works awarded to ISG Construction Ltd that commenced in June 2021. This was discounted on the basis it would not fulfil all the conditions of Regulation 72(1)(c), Modification of Contracts During their Term, of the Public Contracts Regulations 2015.
- 7.4.4 Value of money is demonstrated by:

- A cost quality appraisal based on the framework set criteria for direct award was undertaken and demonstrated that ISG Construction Ltd ranked first.
- This has the advantage that ISG Construction Ltd has a vast knowledge of the building, its layout, condition and fabric by the works currently being carried out in the Council House Complex which includes the BMAG areas. This not only speeds up the construction process but ensures that the quality is maintained at the same level which has been of a very high standard to date.
- Having two different contractors on site at the same time is not a feasible option for the following reasons:
  - To comply with Health and Safety regulations, only be one Principal Contractor on site taking on the responsibility of the Health and Safety regulations for that site at any one time.
  - Contractual implications. there could be disputes and costly claims for delays between the two contractors in the same areas of work
  - Insuring the works by two separate contractors to the same building could create issues with increased disputes on any potential insurance claims against the Council and each other.
  - Direct award would enable an earlier occupation of the BMAG areas and opening the building back up to the general public to maintain income generation.
  - The pre contract programme would be shorter enabling an earlier start on site to meet the MEND grant conditions of first draw down by 25th April 2022.
  - No duplication of some of the preliminary costs as they are already included in the Council House complex project
  - The post contract programme would also be shorter for the construction period as the operatives will have had over 18 month's experience of working on the site and would have familiarised themselves with the building.
  - The existing site set up will be used therefore no costs for this activity which also reduces the programme.
  - The only way to avoid the problems with having two separate contractors on the site at any one time would be to wait until ISG Construction Ltd have finished their works before the new contractor commences the MEND items of works. Not only would this inflate costs due to increased inflation, but the construction works would not be completed within the MEND fund timescales and conditions of the grant.

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

- 7.5.1 Professional services to support the project will be provided by Property, Finance, Procurement and Legal Officers who will be engaged to deliver this proposal with technical support from Acivico Ltd who will administer the contract.

## **7.6 Public Sector Equality Duty**

- 7.6.1 A copy of the Equality Act 2010 – Public Sector Duty statement together with the initial equality assessment screening are appended – Appendix 3 ref EQUA545  
The initial equality assessment discloses that the report recommendations will not have a negative impact on the characteristics and groups protected under the Equality Act 2010 and therefore it is considered that a full assessment is not required for this report.

## **8 Background Documents**

- 8.1 Cabinet report: “Birmingham Museum & Art Gallery repairs funding” dated 7<sup>th</sup> September 2021
- 8.2 Cabinet report: “Council House Complex - Electrical Upgrade and Refurbishment Works – Full Business Case” dated 18<sup>th</sup> May 2021

### **List of appendices accompanying this report:**

- Appendix 1 Exempt Information  
Appendix 2 Outline Business Case  
Appendix 3 EINA