

**AGENDA ITEM: 18**      Pages 117 – 125

Meeting	Cabinet Resources Committee
Date	28 February 2012
<b>Subject</b>	<b>Regeneration Projects – Contract Arrangements</b>
Report of	Leader of the Council
Summary	This report seeks retrospective authority for the expenditure incurred with respect to independent resident advice for the Grahame Park, Stonegrove and Spur Road and Dollis Valley Regeneration Schemes and with respect to Compulsory Purchase Order advice on the Stonegrove & Spur Road Regeneration Scheme. In addition, the report seeks authority to waive the council's Contract Procedure Rules to allow the direct appointment of a) Independent Resident Advisors for the above schemes and the West Hendon Regeneration Scheme and b) a Compulsory Purchase Order consultant for the Stonegrove & Spur Road Regeneration Scheme

Officer Contributors	Tony Westbrook (Principal Project Manager, Strategic Planning and Regeneration Service), Abid Arai (Senior Project Manager, Grahame Park, West Hendon), Susan Botcherby (Senior Project Manager, Stonegrove & Spur Road, Dollis Valley) and Susan Lowe (Procurement Manager)
Status (public or exempt)	Public, with a separate exempt report
Wards affected	Colindale, Underhill and Edgware
Enclosures	None
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in	Not applicable

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## **1. RECOMMENDATION**

### **1.1 That Committee grants retrospective authority for:**

**a) The expenditure incurred with respect to the Resident Independent Advisors for Grahame Park, Stonegrove and Spur Road and Dollis Valley regeneration schemes.**

**b) The expenditure on services provided by GVA in connection with the Stonegrove and Spur Road Compulsory Purchase Order.**

### **1.2 That authority is given to waive the Contract Procedure Rules to allow the direct appointment of: a) Solon Community Network, b) Priority Estates Project, c) PPCR Associates Limited to provide continued Resident Independent Advisor services on the Grahame Park, West Hendon, Stonegrove & Spur Road and Dollis Valley Regeneration Schemes and d) GVA to provide continued consultancy services in connection with the Stonegrove and Spur Road Compulsory Purchase Order, for reasons set out in Section 9 of this report.**

### **1.3 That officers be authorised to prepare letters of appointment and relevant Terms and Conditions for signature by the above organisations.**

## **2. RELEVANT PREVIOUS DECISIONS**

2.1 Cabinet, 30 August 2005 (Decision item 5) – authorised the entering into a Principal Development Agreement for the regeneration of the West Hendon area.

2.2 Cabinet, 24 July 2006 (Decision item 5) – authorised the entering into a Principal Development Agreement for the regeneration of the Grahame Park area.

2.3 Cabinet, 18 June 2007 (Decision Item 6) – approved the final terms of the Principal Development Agreement and legal arrangements for the regeneration of the Stonegrove and Spur Road estates and resolved to make a Compulsory Purchase Order.

2.4 Delegated Powers (number 563) – 10 June 2008 – approved the appointment of Solon Community Network as Resident Independent Advisor on the West Hendon estate.

2.5 Cabinet Resources Committee, 7 November 2011 (Decision 5) – authorised the entering into a Principal Development Agreement for the regeneration of Dollis Valley, subject to the Deputy Chief Executive being satisfied as to the terms of such agreements and the Assistant Director-Legal, or authorised delegate, being satisfied as to the form of such agreements.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

3.1 The regeneration of the priority regeneration estates (Grahame Park, West Hendon, Stonegrove and Spur Road and Dollis Valley) supports the Corporate Plan 2011-2013 priority of 'A successful London Suburb' and the strategic objective under this priority to *sustain Barnet as a successful place through plans for regeneration and strategic growth*.

3.2 The regeneration of the priority regeneration estates also supports the 'One Barnet - A Sustainable Community Strategy for Barnet 2010–2020' through the following objectives:

1. A new relationship with citizens - the new developments will offer more choice and promote independence by providing a number of different housing options such as shared ownership to residents and those in the wider community.

2. A one-public-sector approach - the Council is working together with other public sector partners to ensure the delivery of the schemes.
3. A relentless drive for efficiency - the Council is working with development partners to ensure that the schemes are delivered in the most cost effective way.

3.3 The redevelopments also comply with strategic objectives in the Council's Housing Strategy 2010-2025 which include:

1. Increasing housing supply, including family sized homes, to improve the range of housing choices and opportunities available to residents; and
2. Promoting mixed communities and maximising opportunities available for those wishing to own their home.

## 4. RISK MANAGEMENT ISSUES

### 4.1 Independent advice for residents of regeneration estates

4.1.1 The risks associated with the current status quo of the Resident Independent Advisor contracting arrangements are predominantly two fold.

(i) Where no contract exists LBB are reliant upon an implied contract, clearly this arrangement is unacceptable given the numerous uncertainties that it creates between the parties. In the event that the contracting arrangements were homogenised then clarity would be regained and risk minimised assuming that the Resident Independent Advisors agreed the proposed contracts.

(ii) Secondly as officers are unsure of the initial origin of the contracts we cannot be sure of historic compliance with the Public Contract Regulations 2006 which requires the competitive tendering of opportunities which are above the European Public Contracts Regulations threshold (as in this instance when service requirement is aggregated) and which fall within the remit of the regulations. In the event that LBB is found to be in breach of the Public Contract Regulations 2006, then there is a risk of challenge whereby the challenger can seek to have the contract made ineffective and or have punitive damages awarded accordingly.

4.1.2 In light of the above, the extent to which the Public Contract Regulations 2006 apply must be determined. On the facts, it appears that the Resident Independent Advisor service falls within Part B (Category 25 - Health and Social Services) of the Public Contract regulations. Under the Public Contracts Regulations, there are only a few specific obligations that apply to the award of a Part B services contract. Crucially the rules that relate to the obligation to hold a competition, criteria to be applied and the tender process itself do not apply to the same extent as a Part A service. Thus, there is no legal obligation on the local authority to comply with these requirements to the same extent. However, that being said the fundamental precepts of fairness and transparency will still apply. Whilst the risk of challenge can not be irradiated in its entirety it is likely to be limited assuming a low level of market sector appetite for litigation.

4.1.3 It is worthy of note that Regulation 14 of the rules may apply which states as follows:

*14.—(1) A contracting authority may use the negotiated procedure without the prior publication of a contract notice in accordance with regulation 17(3) in the following circumstances—*

*(a) in the case of a public contract—*

*when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the public contract may be awarded only to a particular economic operator;*

It is considered that the unique Resident Independent Advisor's involvement with local residents would fall within the remit of Regulation 14. Again this mitigates LBB's risk of challenge.

- 4.1.4 The Resident Independent Advisors act as a source of information and provide impartial advice and support for all residents of the Grahame Park, West Hendon, Stonegrove and Spur Road and Dollis Valley estates. Solon Community Network, the Resident Independent Advisor on Grahame Park and West Hendon, Priority Estates Projects, the Resident Independent Advisor on Stonegrove and Spur Road estates and PPCR Associates Limited, the Resident Independent Advisor on the Dollis Valley Estate have been in place for a number of years and have built up close working relationships with both residents and stakeholders. It is viewed that it would be against the interests of the residents living in the regeneration schemes for there to be a change in service providers at this critical period of delivery. Undertaking a tendering process could hinder the positive engagement with residents faced with the prospect of losing their homes. This may in turn impact on the ability of the council and its developer partners to assemble land for regeneration purposes, leading to a delay in scheme delivery.
- 4.1.5 The Council's standard purchase terms and conditions will be used to formalise the Council's appointment of the Resident Independent Advisors. The contracts for the Resident Independent Advisors on Grahame Park and West Hendon Regeneration Schemes will be for a 3-year period. Contracts for Stonegrove & Spur Road and Dollis Valley Regeneration Schemes will be for a 17-month and 6-month period. In acknowledgement that regeneration schemes can be delayed by market forces and other unforeseen events, an additional clause (where relevant) will be added to limit the notice period and payment should a long-term delay to the scheme occur. If further Resident Independent Advice services are required at the end of these contract periods, these will be procured in line with the Council's Contract Procedure Rules.
- 4.1.6 It is proposed that PPCR Associates Limited, the Resident Independent Advisor on Dollis Valley will continue to provide a service to residents for a 6-month period, during which time procurement of a new Resident Independent Advisor will be conducted in line with the London Borough of Barnet's Contract Procedure Rules. Procurement of a new Resident Independent Advisor on this regeneration scheme is considered appropriate at this juncture as the process to select a commercial developer and Registered Provider (or Housing Association) was completed in late 2011 and a new master plan is being taken forward with the new partners.
- 4.1.7 A formal monitoring framework has been agreed as part of the proposed contracts. Service providers will be required to submit a work plan on a quarterly/annual basis to be agreed by London Borough of Barnet in advance. Invoices are to be submitted monthly/quarterly accompanied by a breakdown of costs against elements of the service and a monthly/quarterly log of calls to the Resident Independent Advisor freephone number. Finally quarterly review meetings will be held to review service provider performance.

## **4.2 Consultancy advice in respect of the Stonegrove & Spur Road Compulsory Purchase Order**

- 4.2.1 Risk of non compliance with the council's Contract Procedure Rules – costs (as set out in the accompanying exempt report) have been incurred by the council for GVA's preparation of the Statement of Reason for the Compulsory Purchase Order, a key non-statutory document that was served on all qualifying interest holders within the CPO context, with the Compulsory Purchase Order Notice in accordance with the Secretary of State's requirement in circular No 06/04. The use of GVA without the appropriate

procurement process (the seeking of two competitive quotations in accordance with table 6.1 of the Contract Procedure Rules) arose due to the wish to minimise costs to the Scheme by using the same contractor as our Development Partners and to procure that contractor on a single supplier basis. However, it has now been established through discussions with LBB Corporate Procurement and Legal teams that the single supplier route is not appropriate in this situation, and therefore our current arrangement with GVA is non-compliant. This report seeks authorisation for expenditure of £15,000 (excluding VAT) to date and a further estimated cost £25,000 for GVA's advice on preparing for and providing evidence at a Compulsory Purchase Order public inquiry. At this stage, the need for a public inquiry has not been confirmed and therefore the seeking of authorisation for associated expenditure is for a worst case scenario.

- 4.2.2 Cost recovery – fees paid to GVA are recoverable from Barratt under the Compulsory Purchase Order Indemnity Agreement (June 2011). Provision for £35,255 (excluding VAT) costs has been made within the Compulsory Purchase Order Estimate of Part 2 Compulsory Purchase Order Costs for consultancy advice associated with the seeking of the Compulsory Purchase Order plus provision (of up to £100,000) for appearance of witnesses at a Compulsory Purchase Order Inquiry.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 The regeneration schemes will cumulatively deliver a mix of approximately 6,800 new homes for private sale, social rented and low cost home ownership over the next 15 years. The developments will also provide new community facilities and commercial units for businesses to rent or lease. The Council will have 100% nomination rights to the new affordable housing and the existing secure tenants will be offered re-housing on the existing housing estates. The regeneration schemes and other new affordable housing developments will provide a new area of mixed tenure housing with a greater choice of homes that will make the borough a better and more prosperous place to live, leading to improved community cohesion in areas with diverse populations.
- 5.2 The Resident Independent Advisors for the priority regeneration estates provide a source of independent support and advice for tenants, leaseholders and freeholders who are due to be relocated as a direct result of regeneration plans. A key role of the Resident Independent Advisors is to work with the scheme's delivery partners to establish consultation frameworks which recognise the diversity of the estates in order to maximise inclusion of residents in the planning of their new homes. The Resident Independent Advisors help to ensure vulnerable residents, members of ethnic groups and non-English speakers all receive information and advice.

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

### **6.1 Grahame Park Resident Independent Advice**

#### **6.1.1 Historic costs**

Solon Community Network has been providing a Resident Independent Advisor service to residents on the Grahame Park Estate since February 2002. The contract was originally let by LBB Housing. A review of the contract took place in 2011 when LBB and Choices for Grahame Park Limited agreed an updated work plan for the service. Expenditure to date is £223,813.

### 6.1.2 Future costs

The approximate cost of the Resident Independent Advisor service by Solon Community Network on the Grahame Park estate over the next three years is £36,000 (exclusive of VAT). This cost is recoverable under the Principal Development Agreement between the Council and its delivery partner, Choices for Grahame Park Limited, and costs will be recovered on a quarterly basis (in arrears). This added to expenditure to date will bring the total cost of the service to an estimated £259,813 which is in excess of the EU procurement threshold of £156,422.

## 6.2 **Stonegrove and Spur Road Resident Independent Advice**

### 6.2.1 Historic costs

Priority Estates Project has been providing a Resident Independent Advisor service to residents on the Stonegrove and Spur Road Estate since July 2004. The contract was originally let by LBB Housing. A review of the contract did not take place until November 2010 when LBB negotiated a reduction in Priority Estates Project's hourly rate and required the company to submit quarterly work plans to be agreed by LBB's senior project manager in advance of work taking place. Expenditure to date is £342,017.

### 6.2.2 Future costs

LBB has produced a revised specification and Priority Estates Project provided a lump sum price for Resident Independent Advisor services for a 17-month contract period. The price quoted is £46,455 (excluding VAT). The cost of providing the Resident Independent Advisor service is recoverable under the Stonegrove and Spur Road Principal Development Agreement (Schedule 4 – Council's Costs). Recovery of these costs is immediate. This added to expenditure to date will bring the total cost of the service to an estimated £388,472 which is in excess of the EU procurement threshold of £156,422.

## 6.3 **Dollis Valley Resident Independent Advice**

### 6.3.1 Historic costs

PPCR Associates Limited has been providing a Resident Independent Advisor Service to residents on the Dollis Valley Estate since May 2008 when Dearle and Henderson, the previous Resident Independent Advisor on the Dollis Valley Estate went into voluntary administration and withdrew their services from the estate. Expenditure to date is £22,662.

### 6.3.2 Future costs

The cost of the Resident Independent Advisor service by PPCR Associates Limited on Dollis Valley will be approximately £7,000 (exclusive of VAT) for the next six months (April – September 2012). This cost is recoverable under the draft Development agreement which the Council is about to enter into with its delivery partner, Countryside/London & Quadrant consortium, and costs will be recovered on a quarterly basis (in arrears).

## 6.4 **West Hendon Resident Independent Advice**

6.4.1 The cost of the Resident Independent Advisor service by Solon Community Network on the West Hendon estate will be £29,000 (exclusive of VAT) for 2012-13 and £25,000 (exclusive of VAT) for 2013-14 and 2014-15. The total cost of the 3-year contract is £79,000. As aforementioned, this Scheme cost is currently being covered by Barratt Metropolitan Limited Liability Partnership. In future, these costs might be covered by the Council, although the West Hendon Principal Development Agreement makes provision for the Council to recover these costs so the provision of the service is cost neutral to the Council.

- 6.5 Any unforeseen activity falling outside the core specification for Grahame Park, West Hendon, Stonegrove and Spur Road or Dollis Valley, for example, the need to hold a special training session or site visit, extra fees will be incurred and will be charged at Solon Community Network/Priority Estates Project's current hourly rates, as set out in the accompanying exempt report. However work falling outside the agreed core specification cannot take place without the express and advance authorisation of the council.
- 6.6 If authorised, the revised contracts for the Resident Independent Advisors on Grahame Park, West Hendon, Stonegrove and Spur Road and Dollis Valley will commence on 1 April 2012 subject to completion of contractual arrangements. In the interim period, it is proposed that Solon Community Network (Grahame Park and West Hendon), Priority Estates Project (Stonegrove and Spur Road) and PPCR Associates Limited (Dollis Valley) provide their services charged at the current hourly rate set out in the accompanying exempt report.
- 6.7 There are no issues to report around Staffing, IT, Property and Sustainability.

## **7. LEGAL ISSUES**

- 7.1 Officers have obtained advice in connection with contract arrangements for Resident Independent Advice from LBB Legal which is set out in Section 4.1.1 to 4.1.3 (Risk Management Issues).
- 7.2 The statement of Reason is a non-statutory document that should be prepared at the same time as a Compulsory Purchase Order is being drafted, because the Secretary of State has requested order making authorities to serve on each person entitled to be served with personal notice of the making of the order, a copy of the statement of reason for the making of it. The content of the statement of reason is prescribed by the Secretary of State in Circular 06/2004 Crichton Down Rules. The Council had to procure a consultant to prepare the statement of reason on its behalf, for the reasons stated in the body of the report.

## **8. CONSTITUTIONAL POWERS**

- 8.1 Constitution – Part 4 Council Procedure Rules – Section 5.8 - Urgent/Emergency Procedures & Waiver of Contract Procedure Rules - the Contract Procedure Rules may only be waived on the decision of a Cabinet Committee and only where that Committee is satisfied, after considering a written report by the appropriate officer, that the waiver is justified because: 5.8.1 the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procedure Rules is justifiable.

## **9. BACKGROUND INFORMATION**

### **9.1 Grahame Park**

- 9.1.1 The regeneration of the Grahame Park estate aims to transform it into a thriving, 3,440-home mixed tenure community, with improved transport links and enhanced community facilities. Grahame Park renewal forms a key part of the Colindale regeneration area, supported by the Area Action Plan adopted March 2010.
- 9.1.2 In order to formalise the contractual arrangements with Solon Community Network, a waiver from the Contract Procedure Rules (revised in September 2011) is being sought for the following reasons: a) the Grahame Park regeneration scheme has reached a

critical point. Secure council tenants began moving into their new homes in the area known as Phase 1a of the regeneration in February 2011 and will continue to do so until July 2012. It is crucial for displaced residents to have access to independent and impartial advice during this time, b) it is a condition of funding from the Homes and Communities Agency that the affordable rented homes in the area known as Phase 1b of the scheme are completed by March 2014. The replacement of an established and trusted Resident Independent Advisor service at this stage in the scheme could seriously hamper the council's ability to decant residents for regeneration purposes leading to a delay in the scheme. A new provider would need time to familiarise itself with the scheme, residents and delivery partners and as a result would not be able to provide the level of service required on contract commencement.

## **9.2 Stonegrove & Spur Road**

9.2.1 The vision for the regeneration of the Stonegrove and Spur Road Estates is to create a new revitalised, attractive, vibrant and sustainable new neighbourhood. On completion of the regeneration programme, all 603 properties will have been demolished and replaced by 999 new homes of mixed tenure (including 479 affordable homes).

### **9.2.2 Resident Independent Advice**

In order to formalise the contractual arrangements with Priority Estates Project, a waiver from the Contract Procedure Rules (revised in September 2011) is being sought for the following reasons: a) it is a condition of Homes and Communities Agency funding that Phase 2 of the scheme is completed by March 2013 and all remaining affordable housing by 2016. The replacement of an established and trusted Resident Independent Advisor service at this stage in the scheme could seriously hamper the council's ability to decant residents for regeneration purposes leading to a delay in the scheme and loss of Homes and Communities Agency grant funding, b) the delivery of Phase 2 is key to providing new homes for the council's remaining secure tenants on the Estate. The phase is already on site and therefore the need for a 'top speed' service is immediate. A new provider would need time to familiarise itself with the scheme, residents and delivery partners and as a result would not be able to provide this level of service on contract commencement.

### **9.2.3 Compulsory Purchase Order advice**

GVA have been commissioned by Barratt Evolution Ltd (Barratt) to act as the independent valuer in relation to acquisition of leasehold properties through private treaty (including the negotiation of compensation). In addition, GVA are responsible for negotiating the acquisition of properties (including the award of compensation) with leaseholders as part of the land assembly process. Barratt's role in the land assembly process through private treaty is inescapably linked to the council's Compulsory Purchase Order process. For example, the council will need to demonstrate that efforts have been made as part of the regeneration process, to purchase land interests without the use of Compulsory Purchase Order powers, the purchase through private treaty uses Compulsory Purchase Order principles for the valuation of property and award of compensation and Barratt have to contribute to the preparation of the Compulsory Purchase Order Schedule, Plan and Statement of Reason which accompany the Compulsory Purchase Order Notice served by the council.

9.2.4 The Council required consultancy advice for the preparation of the Statement of Reason (a document setting out the background of the Regeneration Scheme and the reason for seeking a Compulsory Purchase Order), which it is required to submit with the Compulsory Purchase Order Notice. In addition should, there be a public inquiry, the council will require assistance in the preparation of its case at that inquiry (including assistance in the assembling of witnesses and co-ordination of their evidence).



9.2.5 In order to formalise the contractual arrangements with GVA, a waiver from the council's Contract Procedure Rules (revised in September 2011) is being sought as commissioning of separate consultancy firms by Barratt and the Council is not considered to be cost effective since it would create duplication in advice and cost to the Regeneration Scheme (Barratt's and the council's costs are both chargeable to the Scheme).

### **9.3 Dollis Valley**

9.3.1 The regeneration of the Dollis Valley estate is still at the planning stage. The vision for the regeneration of this estate is to provide between 523 and 1000 new homes, a community facility for use by local people and others, the creation of a neighbourhood with a high quality design, public realm and estate management and transport improvements amongst other benefits which will all result in the promotion and/ or of the social and environmental well being of the area.

9.3.2 As outlined in paragraph 4.1.6 above, it is proposed that PPCR Associates Limited continue to provide a service to residents for a 6-month period, during which time procurement of a new Resident Independent Advisor will be conducted in line with the council's Contract Procedure Rules (revised in September 2011).

### **9.4 West Hendon**

9.4.1 The regeneration of the West Hendon estate aims to create a new integrated community by replacing the existing 680 homes on the estate with new mixed tenure housing development of up to 2,171 homes. The proposals also include the creation of a new town square and improved transport links.

9.4.2 In order to formalise the contractual arrangements with Solon Community Network, a waiver from the Contract Procedure Rules is being sought for the following reasons: a) the initial phase of the development has commenced and it is crucial for residents to have access to impartial and independent advice during this time, b) the council and Barratt Metropolitan Limited Liability Partnership are currently undertaking a comprehensive review of the masterplan for the rest of the scheme. The review will involve extensive consultation on the potential options for the scheme. Residents will need to be supported during the process. This review will be completed in 2012; c) the council will be creating a Partnership Board for the West Hendon scheme. The board will comprise resident representatives from the estate and officers from the council, Barnet Homes and Barratt Metropolitan Limited Liability Partnership. Solon Community Network has been tasked with recruiting resident board members. A new provider would need time to familiarise itself with the scheme, residents and delivery partners and as a result would not be able to provide this level of service on contract commencement.

9.5 A summary of the role of the Resident Independent Advisors is given in section 5.2 of this report.

## **10. LIST OF BACKGROUND PAPERS**

10.1 None

Legal – TE

CFO – JH/MC