

## **Report to the Cabinet**

**Report reference:** C-041-2018/19  
**Date of meeting:** 11<sup>th</sup> April 2019



**Portfolio:** Housing & Property Services

**Subject:** Council House Building - Progress Report for Phases 1-6

**Responsible Officer:** Matt Rudgyard - Development Manager (01992 562363)

**Democratic Services:** Adrian Hendry (01992 564756)

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### **Recommendations/Decisions Required:**

**That the contents of this Progress Report on Phases 1 - 6 of the Council House-building Programme be noted, and presented to the Cabinet in line with the Terms of Reference of the Council House Building Cabinet Committee.**

### **Executive Summary:**

This report sets out the progress that has been made across each of the six phases of the House-building programme that have either completed, are on site or are currently being procured. Since the programme began a total of 45 new homes for affordable rent have been completed and a further 63 are expected to be delivered under Phases 1,2 and 3. Phases 4,5 and 6 will deliver another 73 homes over the next three years with more homes in the pipeline subject to planning consents.

There have been some time delays and cost increases against the original programme. These have been caused by different reasons including non-performance of contractor, unforeseen asbestos, land contamination issues, and an undetected electricity cable. The full details on each phase are set out in the report.

An internal audit of the council house-building programme was undertaken in February 2019 and has identified some lessons to be learnt from phases 1, 2, and 3. Actions are now being put into place to improve future programme delivery including a new set of contractor performance indicators.

### **Reasons for Proposed Decision:**

Set out in its Terms of Reference, the Cabinet Committee is to monitor and report to the Cabinet on an annual basis progress and expenditure in relation to the Council House-building Programme. This report sets out the progress made over the last 12-months.

### **Other Options for Action:**

This report is on the progress made over the last 12-months and is for noting purposes only. There are no other options for action.

## **Phase 1 (Recovery Phase)**

1. Further to the determination of the contract with Broadway Construction Ltd, a contract was awarded to P.A. Finlay and Company Ltd to complete the works on Phase1 as approved by the Committee on the 22<sup>nd</sup> September 2016.
2. The Phase 1 recovery work was completed on the 31<sup>st</sup> October 2017 with the last two homes on the Red Cross site being handed over and occupied. The homes built are now in the defects liability period (a 2-year period where the Contractor retains responsibility for contractual defects reported). The defects liability period for Phase 1 will end on the 31<sup>st</sup> October 2019.
3. The original contract with Broadway Construction Ltd was let on the 27<sup>th</sup> October 2014 with completion expected on the 13<sup>th</sup> November 2015. With the delays that built up under the contract with Broadway Construction, together with the Council determining the contract and the subsequent procurement of a new contract with P.A. Finlay and Company Limited meant an overall delay of 102 weeks on the original anticipated handovers.
4. The determination of the contract with Broadway Construction Limited also led to a significant increase in costs with the works costs rising from £2,214,611.52 to £5,787,343.84. Overall, the recovery project was 62% more expensive than the original contract. The increased costs were mainly due to remediation works, additional drainage works and utility works. In these circumstances a premium is also paid for appointing a contractor to take on another contractor's unfinished work and all the risks associated with the project.

## **Notice of Adjudication from Broadway Construction Ltd**

5. On 22 November 2017 the Council received a notice of Adjudication, which was referred by Broadway Construction Ltd (BCL). The dispute concerns the termination of the contract by the Council on 1st June 2016. BCL maintains and claims that the termination was wrongful and constituted a repudiatory breach of contract.
6. In April 2016, the Council served a default notice on BCL claiming that BCL was not proceeding with the contract works regularly and diligently. Later on 1 June terminated the Contract on the ground that BCL had continued with the default specified in its notice served in April 2016. BCL assert that this is contrary to the true facts and progress of the works on the Project, and that they do not accept the validity of the default notice or the termination of the Contract.
7. BCL have therefore given notice to refer the dispute to adjudication in accordance with the Contract.
8. BCL are seeking the following relief and decision from the Adjudicator:
  - That the Council wrongfully terminated the Contract;
  - That the Council is liable for repudiatory breach of contract;

- That the Council is liable to pay Broadway the costs, damages and expenses that are proven to have been incurred by Broadway as a result of the wrongful termination of the Contract and repudiatory breach of contract;
- That the Council has no entitlement to retain or withhold liquidated damages improperly withheld prior to and following the termination of the Contract because no demand for payment of liquidated damages has been made in accordance with the Contract; and
- That the Council shall pay the Adjudicator's costs and expenses incurred in this adjudication.

9. The Council appointed Trowers and Hamlins as its expert Solicitors to defend the adjudication. The Adjudicator indicated that he should reach his decision by 2 February 2018.

10. The Adjudicator's decision was made on the 2<sup>nd</sup> February 2018 and found in favour of the Council on all matters as follows;

- Epping was entitled to terminate the Contract in accordance with Clause 8.4.2 of the Contract.
- Epping is entitled to any sum due from Broadway pursuant to Clause 8.7.4 of the Contract.
- Epping was not obliged to issue a demand for payment pursuant to Clause 2.29.5 in order to withhold or deduct liquidated damages from Broadway and Epping's rights in this regard are unaffected by the termination (howsoever caused) in accordance with Clause 8.3.1 of the Contract.
- Broadway shall be primarily liable for my fees and expenses, which in total amount to £23,062.50 + VAT of £4,612.50 making a total of £27,675.00. In the event that Epping has paid any portion of my fees and expenses for which Broadway is primarily liable, such portion shall be immediately reimbursed. Until payment in full has been received in respect of my fees and expenses, the parties shall remain jointly and severally liable for all fees and expenses incurred by me pursuant to this adjudication, together with any accruable interest. I will inform the parties when this liability has been discharged.

11. Further to the Adjudicator's decision the Council received a cheque from the Supervisor of BCL in the sum of £66,162.65. This is the final settlement and there is no other opportunity to recover any further costs.

**Phase 2 - Burton Road, Loughton – 15 x 3 bed houses, 2 x 2 bed houses, 23 x 3 bed flats & 11 x 1 bed flats**

<b>Scheme</b>	<b>Contractor</b>	<b>Start on site date</b>	<b>Contract Period</b>	<b>Contract comp. date</b>
Burton Road	Mulalley	23 <sup>rd</sup> February 2016	104 weeks	26 <sup>th</sup> February 2018
<b>Anticipated completion date</b>	<b>Variation</b>	<b>Contract Sum</b>	<b>Anticipated Final Account</b>	<b>Variation</b>

19 <sup>th</sup> July 2019	+ 72 weeks	£9,847,179.00	£10,861,015.00	£1,013,836.00
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12. This development is behind programme and has encountered a number of delays due to the following:

- The discovery of an unidentified live cable running across the site.
- Additional time spent remediating contamination across the site that had not previously been identified.
- The fire in August 2018 to the upper floors of Block B which has extended completion to July 2019. There will be a phased handover of all of the houses and flats in Block A through April and May 2019.

13. The anticipated final account is currently £10,861,015.00 which represents a 10% increase upon the originally agreed contract sum. The additional costs relate to the diversion of the live electric cable, additional remediation costs, and additional offsite works that have been instructed on the main highway. The costs relating to the fire will be covered by the Contractor and their insurers with no implications for the Council.

### Phase 3

#### **Bluemans End - 2 x 3b houses, 1 x 2b Flat & 1 x 2b flat**

	<b>Contractor</b>	<b>Start on site date</b>	<b>Contract Period</b>	<b>Contract comp. date</b>
Bluemans End	TSG Building Services Ltd	2 <sup>nd</sup> May 2018	36 weeks	17 <sup>th</sup> January 18
<b>Actual completion date</b>	<b>Variation</b>	<b>Contract Sum</b>	<b>Final Account</b>	<b>Variation</b>
26 <sup>th</sup> March 2018	+ 8 weeks	£753,034.23	£839,170.77	+£86,136.54

14. The homes were handed over on the 26<sup>th</sup> March 2018 which was a total of 8 weeks behind programme. This was due to Thames Water delays in providing their connection.

15. The Final Account was agreed at £839,170.77 which is 11% above the originally agreed contract sum. These additional costs are made up of variations mostly relating to boundary treatments, the removal of unforeseen contaminated waste and removal of asbestos.

#### **Stewards Green Road - 4 x 2b houses**

<b>Scheme</b>	<b>Contractor</b>	<b>Start on site date</b>	<b>Contract Period</b>	<b>Contract comp. date</b>
Stewards Green Road	TSG Building Services Ltd	22 <sup>nd</sup> May 2017	34 weeks	24 <sup>th</sup> January 18
<b>Actual completion date</b>	<b>Variation</b>	<b>Contract Sum</b>	<b>Anticipated Final Account</b>	<b>Variation</b>
13 <sup>th</sup> December 2018	+ 46 weeks	£752,340.41	£852,921.00	+£100,580.59

16. The homes were handed over on the 13<sup>th</sup> December 2018 which was a total of 46 weeks behind programme. This delay was due to the discovery of asbestos in the hardcore material that had been used to form the sub-base of the new entrance road.

17. The Final Account is yet to be agreed but is anticipated at £852,921.00 which is 13% above the originally agreed contract sum. These additional costs are made up of variations mostly relating to boundary treatments and the removal of contaminated waste over and above what had been allowed for. The Council intends to pursue the Consultant for costs in relation to the additional works that were required to clear the previously unidentified hazardous materials.

#### **London Road – 1 x 3b House**

<b>Scheme</b>	<b>Contractor</b>	<b>Start on site date</b>	<b>Contract Period</b>	<b>Contract comp. date</b>
London Road	VSN Enterprises Ltd	19 <sup>th</sup> June 2017	36 weeks	7 <sup>th</sup> March 2018
<b>Actual completion date</b>	<b>Variation</b>	<b>Contract Sum</b>	<b>Final Account</b>	<b>Variation</b>
7 <sup>th</sup> March 2018	Nil	£235,695.00	£262,507.93	+£26,812.93

18. The home was handed over having reached practical completion on the 7<sup>th</sup> March 2018 which was as per the agreed programme

19. The Final Account was agreed at £262,507.93 which is 11% above the originally agreed contract sum. These additional costs were because of variations to the specification, the most significant additional costs being the change in heating system required and PV installation.

#### **Parklands, Coopersale – 2 x 2b Houses & 1 x 1b Flats**

<b>Scheme</b>	<b>Contractor</b>	<b>Start on site date</b>	<b>Contract Period</b>	<b>Contract comp. date</b>
Parklands	Denmark and White Ltd	18 <sup>th</sup> April 2017	56 weeks	24 <sup>th</sup> May 2018
<b>Actual completion date</b>	<b>Variation</b>	<b>Contract Sum</b>	<b>Final Account</b>	<b>Variation</b>
10 <sup>th</sup> October 2018	+ 20 weeks	£716,756.74	£763,848.98	+£47,092.24

20. The homes were handed over having reached practical completion on the 10<sup>th</sup> October 2018 which was a total of 20 weeks behind programme. The delays were due to the design of the gravity fed drainage system and associated increase in ground levels.

21. The Final Account was agreed at £763,848.98 which is 7% above the originally agreed contract sum. These additional costs are made up of variations, the most significant being

the increase in levels across the whole of the development to allow for a gravity fed drainage system.

**Springfield and Centre Avenue – 1 x 3b House, 5 x 2b Houses & 2 x 1b Bungalows**

<b>Scheme</b>	<b>Contractor</b>	<b>Start on site date</b>	<b>Contract Period</b>	<b>Contract comp. date</b>
Springfield and Centre Avenue	Denmark and White Ltd	18 <sup>th</sup> April 2017	60 weeks	21 <sup>st</sup> June 2018
<b>Actual completion date</b>	<b>Variation</b>	<b>Contract Sum</b>	<b>Final Account</b>	<b>Variation</b>
7 <sup>th</sup> January 2019	+ 28 weeks	£1,408,126.30	£1,650,655.23	+£242,528.93

22. The homes were handed over having reached practical completion on the 7<sup>th</sup> January 2019 which was a total of 28 weeks behind programme. This was due to delays at the end of the programme where external works and boundary treatments took far longer than had previously been anticipated.

23. The Final Account was agreed at £1,650,655.23 which is 17% above the originally agreed contract sum. These additional costs are made up of variations, the most significant being the provision of a gravity fed drainage system and treatments to the site boundaries.

**Centre Drive – 1 x 3b House**

<b>Scheme</b>	<b>Contractor</b>	<b>Start on site date</b>	<b>Contract Period</b>	<b>Contract comp. date</b>
Centre Drive	VSN Enterprises Ltd	30 <sup>th</sup> October 2017	36 weeks	27 <sup>th</sup> June 2018
<b>Actual completion date</b>	<b>Variation</b>	<b>Contract Sum</b>	<b>Final Account</b>	<b>Variation</b>
8 <sup>th</sup> November 2018	+ 19 weeks	£300,285.00	£355,188.00	+£54,903.00

24. The homes were handed over having reached practical completion on the 8<sup>th</sup> November 2018 which was a total of 19 weeks behind programme. This was due to delays at the end of the programme where additional surface water drainage works had to be undertaken.

25. The Final Account was agreed at £355,188.00 which is 18% above the originally agreed contract sum. These additional costs are made up of variations, the most significant being the additional surface water drainage works required.

## Queens Road, North Weald – 10 x 3b Houses & 2 x 2b Houses

<b>Scheme</b>	<b>Contractor</b>	<b>Start on site date</b>	<b>Contract Period</b>	<b>Contract comp. date</b>
Queens Road	Storm Building Ltd	7 <sup>th</sup> January 2019	83 weeks	7 <sup>th</sup> August 2020
<b>Anticipated completion date</b>	<b>Variation</b>	<b>Contract Sum</b>	<b>Anticipated Final Account</b>	<b>Variation</b>
7 <sup>th</sup> August 2020	Nil	£2,320,493.00	£2,706,115.00	£385,622.00

26. Due to the nature of the site a package of initial enabling works needs to be completed, including the relocation of a UKPN substation before construction works can commence.

27. A letter of intent was issued to Storm Building Ltd up to a works value of £250K to undertake the enabling works. The enabling works were expected to take three months to complete.

28. The main construction works were originally expected to commence on the 5<sup>th</sup> March 2018. However, due to several factors including the discovery of a significant volume of asbestos under the concrete slabs to the garages and delays in completing the relocation of the substation the start on site this was delayed until the 7<sup>th</sup> January 2019. Anticipated completion of the project has been delayed until August 2020.

29. In terms of project costs, we are already forecasting an overspend of £385,622.00 above the originally agreed contract sum, an increase of 16%. The cost increases are due to:

- The discovery of asbestos for which an additional £125,000.00 was negotiated with the Contractor for removal costs
- Delay to the start date post tender to the sum of £157,532.41. The contractors original tender was based on a start date in October 2016 and commenced in August 2017.

### **Phase 4 – 6**

30. Further to the end of the Development Agents (East Thames) involvement in the Council House Building Programme on the 9<sup>th</sup> March 2018 the Council has undertaken the following actions;

- Novated the appointment of Pellings LLP for each of the contracts that are currently on site, which makes up Phases 1-3 inclusive (Pellings LLP have acted as Employers Agent across the Council House Building Programme since its inception).
- Amended each of the Building Contracts that are currently in existence across each of the sites making up Phases 1-3 inclusive, removing East Thames and substituting with the Council.
- Engaged site inspection (Clerk of Works) services to undertake weekly site visits to ensure that the Contract Specification and Employers Requirements are being adhered to, as well as monitoring progress on site and advising the Employers Agent/EFDC on construction and programme matters requiring intervention.

- Ensured that there are procedures in place to manage the Defects Liability Period on each contract. It is important that the Council can provide a good level of service to its customers moving into their new homes and the management of defects is crucial to this as it is likely to be one of the first interactions that customers have with the Council.
  - Set up OJEU compliant Frameworks to allow for the selection of Contractors and Consultants on Phases 4, 5 and 6 and any future developments yet to be identified. The new Framework was commenced in October 2018 and runs for four years.
33. The Council is now working closely with its new Framework partners on the sites that make up Phases 4,5 and 6 of the Council House Building Programme and have recently commenced demolition of the first six garage sites to clear the way for construction of the first homes to be developed under this new arrangement.
34. The intention is to clear the sites and undertake site investigations which will inform the design development of the new homes before tendering the construction packages to our Contractor partners. This approach will reduce the risks that have led to the delays and cost increases experienced in Phases 1, 2 and 3 of the programme.

### **Internal Audit**

35. An internal audit of the Council House Building Programme was undertaken in late February 2019. The audit covered a review of the programme information, and arrangements to assess whether there are effective working processes to deliver the Programme on time and on budget. The audit has also sought to verify whether lessons learnt from previous phases of the Programme to improve delivery of future phases.
36. The audit achieved a moderate assurance rating and made recommendations to;
- implement contractor key performance indicators (KPI) performance reporting,
  - to increase the frequency of Programme reporting to Council House Building Cabinet Committee,
  - To include the Right to Buy (RTB) 1-4-1 income as a standing agenda item at team meetings,
  - Update the Programme risk register to incorporate the risks of having to repay RTB 1-4-1 receipts.

### **Resource Implications:**

Estimated expenditure for Phase 1 (inc. fees) - £6,263,985  
 Estimated expenditure for Phase 2 (inc fees) - £11,438,325  
 Estimated expenditure for Phase 3 (inc fees) - £7,451,175  
 Estimated expenditure for Phase 4 - 6 (inc fees) - £16,500,000

### **Legal and Governance Implications:**

It is set out in its Terms of Reference that the Cabinet Committee is to monitor progress and expenditure in relation to the Council House-building Programme and report to the Cabinet on an annual basis.



**Safer, Cleaner and Greener Implications:**

None

**Consultation Undertaken:**

- Ward Councillors have been consulted on each feasibility study that falls within their respective Ward.
- Local Residents, Town and Parish Councils and other statutory bodies have been consulted as part of the planning process where planning applications have been submitted.

**Background Papers:**

- Decisions of the Cabinet committee associated with the feasibility studies for each of the sites that make up Phases 1-6 inclusive.
- Decisions of the relevant Area Planning Sub-Committee, Cabinet, District Development Management Committee or Council associated with the Planning process for each site already approved up to and including Phases 1-6 inclusive.
- Decisions of the Cabinet Committee in respect of Policies or progress monitoring for each of the phases.

**Risk Management:**

There is a comprehensive risk register that has been compiled and is being monitored in respect of the house-building programme. Each risk, where appropriate has a risk mitigation action plan. A programme wide risk register is included for information at Appendix 1.

**Equality Analysis**

The Equality Act 2010 requires that the Public-Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided as an Appendix to the report.