

RUSHMOOR BOROUGH COUNCIL RECORD OF EXECUTIVE DECISION



Decision taken by individual Cabinet Member / Officer (delete as appropriate)

(All sections must be completed (mark "N/A" as applicable))

DECISION MAKER (Name and designation)

Karen Edwards, Executive Director

DECISION AND THE REASON(S) FOR IT

Union Yard Commercial Settlement Agreement relating to an Extension of Time Claim

A Decision taken on 10th December 2021 and reported to Cabinet (report ED 2102) set out the need to undertake urgent works required to an exposed party wall at 35-39 High Street, Aldershot (not part of the main Union Yard construction contract). The final forecasted costs of the repairs to the wall at £316,500 were reported to Cabinet at its meeting on 15th March 2022 (report ED2201).

Due to the concerns with the stability of the wall, an exclusion zone was placed around the wall and piling works on the main construction site were ceased on 27th January 2022. The wall has now been demolished and rebuilt and piling will recommence on 14th June. The cessation of piling and the time associated with the works resulted in an estimated potential delay of 21 weeks against the original timescale.

Under the Joint Contracts Tribunal (JCT) Design and Build Contract the Council has entered into with Hill Partnerships, the contractor is eligible to submit an Extension of Time (EOT) claim to recover their direct and indirect (sub-contractor) losses due to delays not caused by themselves. Hill submitted their EOT claim on 4th March 2022 and instead of a 21-week delay, have claimed a 15-week delay by resequencing the construction programme. The initial financial claim associated with the EOT was £1.4m but Hill indicated as they are a partner in the Rushmoor Development Partnership that they were open to working with the Council to reduce the claim.

The impact of the delay is that the original completion date of 13th June 2024 was extended to 23rd September 2024. This completion date for the scheme raises a significant issue as it would mean that the student accommodation will not be ready for the start of the Autumn term in 2024. This could result in income from the student accommodation being lost for up to a full year. The gross income from the student accommodation is forecast at approx. £900k (gross) in year 1. It was therefore important that as well as negotiating the financial claim, all opportunities were explored to ensure the build completed before the start of the Autumn term 2024.

The Council's Employers Agent has been negotiating on the Council's behalf and the following Commercial Settlement has been agreed as fair and reasonable by both parties and confirmed as such by the Council's legal advisor Browne Jacobsen (e-mail attached):

- (1) The Council grant an Extension of Time to the 22nd July 2024 (instead of 23rd September 2024)
- (2) The Loss and Expense claim associated with the delay be agreed as a Commercial Settlement at £783,000.00 (original EOT claim £1.4m)
- (3) A Deed of Variation be entered into by both parties to remove the current 6-week Liquidated Ascertained Damages (LAD) free period from the contract

An urgent decision is required to enable Hill to activate works packages to ensure no further delays and costs are incurred. Hill will also be requested to reprofile the construction payments to enable the impact on capital budget requirements for 2022/23 and 2023/24 to be assessed and the Head of Finance will then bring forward changes to the agreed budget.

Subject to final confirmation by Bailey Garner (the Council's EA) of the commercial settlement at £783,000, the proposal for the EOT claim as set out at (1)-(3) above be agreed.

This decision has been shared with the Council's Executive Leadership Team and relevant Portfolio Holders. Councillor Mike Smith (Chair of Overview and Scrutiny Committee) has been advised in accordance with the Council's Access to Information Procedure Rules, Arrangements for Urgency and Exceptions Sections (1) and (3). The Decision will be reported to Cabinet at its next meeting.

DATE DECISION TAKEN: 31st May 2022

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

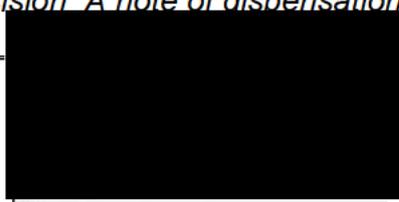
(Those examined by officers and generated by consultation, etc)

To continue to negotiate/contest the EOT claim. This risked ending up with a higher cost overall and the completion date extending beyond July 2024 due to contractors being deferred and difficulties in getting them back onto site given the current market conditions.

ANY CONFLICTS OF INTERESTS DECLARED

(conflict of interests of any executive member who is consulted by the officer which relates to the decision. A note of dispensation should be attached).

Signed:
(Decision Maker)



Signed: _____
(Cabinet Member Consultee where applicable)

Designation: Executive Director

UNION YARD - COMMERCIAL SETTLEMENT AGREEMENT

SUMMARY AND RECOMMENDATIONS:

During the demolition and site clearance works for Union Yard, the party wall between the development site and 35-39 High Street, Aldershot was found to be in need of urgent repair. An urgency decision to enable the repair of the wall was taken by the Executive Director in accordance with the Council's Access to Information Procedure Rules, Arrangements for Urgency and Exceptions Sections (1) and (3) and was noted by the Cabinet at its meeting on 14 December 2021. A further decision reporting the final cost of the works was noted by Cabinet at its meeting in March 2022

The purpose of this report is for Cabinet to note a Record of Executive Decision made to minimise further delays and associated costs to the contract by agreeing a commercial settlement with the contractor, Hill Partnerships Ltd, in relation to an Extension of Time made associated with the delays caused by the repairs to the party wall

1. INTRODUCTION

- 1.1 The purpose of this report is for Cabinet to note the Record of Executive Decision in relation to a commercial settlement agreed with Hill Partnerships Ltd in relation to their Extension of Time (EOT) Claim.

2. BACKGROUND

- 2.1 A decision taken on 10th December 2021 and reported to Cabinet (report ED 2102) set out the need to undertake urgent works required to an exposed party wall at 35-39 High Street, Aldershot (not part of the main Union Yard construction contract). Due to the concerns with the stability of the wall, an exclusion zone was placed around the wall and piling works on the main construction site were ceased on 27th January 2022. The wall has now been demolished and rebuilt and piling will recommence on 14th June. The cessation of piling and the time associated with the works resulted in an estimated potential delay of 21 weeks against the original timescale.
- 2.2 Under the Joint Contracts Tribunal (JCT) Design and Build Contract the Council has entered into with Hill Partnerships, the contractor is eligible to submit an Extension of Time (EOT) claim to recover their direct and indirect (sub-

contractor) losses due to delays not caused by themselves. Hill submitted their EOT claim on 4th March 2022 and instead of a 21-week delay, have claimed a 15-week delay by resequencing the construction programme. The initial financial claim associated with the EOT was £1.4m but Hill indicated as they are a partner in the Rushmoor Development Partnership that they were open to working with the Council to reduce the claim.

- 2.3 The impact of the delay is that the original completion date of 13th June 2024 was extended to 23rd September 2024. This completion date for the scheme raises a significant issue as it would mean that the student accommodation will not be ready for the start of the Autumn term in 2024. This could result in income from the student accommodation being lost for up to a full year. Based on the due diligence undertaken in support of the Union Yard project, the gross income from the student accommodation is forecast at approx. £900k in year 1. It was therefore important that as well as negotiating the financial claim, all opportunities were explored to ensure the build completed in good time to facilitate students moving in for the Autumn term 2024.
- 2.4 The Council's Employers Agent has been negotiating on the Council's behalf and the following Commercial Settlement has been agreed as fair and reasonable (see attached letter) by both parties and confirmed as such by the Council's legal advisor Browne Jacobsen (e-mail attached):
- (1) The Council grant an Extension of Time to the 22nd July 2024 (instead of 23rd September 2024)
 - (2) The Loss and Expense claim associated with the delay be agreed as a Commercial Settlement at £783,000.00 (original EOT claim £1.4m)
 - (3) A Deed of Variation be entered into by both parties to remove the current 6-week Liquidated Ascertained Damages (LAD) free period from the contract
- 2.5 An urgent decision was required to enable Hill to activate works packages to ensure no further delays and costs are incurred.

3. DETAILS OF THE PROPOSAL

- 3.1 A decision has been made to agree a commercial settlement with Hill Partnerships Limited. This settlement is in relation to their EOT claim concerning delays resulting from a part cessation and resequencing of their works which were required as a result of the demolition and rebuild of the party wall at 35-39 High Street (not part of the main Union Yard project). The record of Executive Decision is set out as the Appendix to this report for noting by Cabinet.
- 3.2 In coming to this decision, consultation has been carried out with the Council's Executive Leadership Team, Union Yard Project Board and relevant Portfolio Holders and the Chair of Overview and Scrutiny Committee in accordance with the Council's Access to Information Procedure Rules, Arrangements for Urgency and Exceptions Sections (1) and (3).

4. Legal Implications

- 4.1 A commercial settlement agreement will be signed by both parties, the wording of which has been approved by the Council's legal advisor.
- 4.2 A Deed of Variation will also be required to remove the LAD free period from the JCT contract, and this is being drafted by the Council's legal advisor.

5. Financial and Resource Implications

- 5.1 The cost of the commercial settlement is £783k. Hill have been requested to reprofile the construction payments to enable the impact on capital budget requirements for 2022/23 and 2023/24 to be assessed and the Head of Finance will then bring forward changes to the agreed budget.

6. Risks

- 6.1 Had the decision not been made to agree the commercial agreement, Hill would not have been in a position to place key works packages which would have resulted in further delays and costs.
- 6.2 The added delays would also have had an impact on the completion date of July 2024 with the risk of the student accommodation not being delivered in time for the start of the Autumn term.

7 Equalities Impact Implications

- 7.1 There are no equalities impact implications as a result of this decision.

8. CONCLUSION

- 8.1 The commercial settlement agreement represents a favourable position compared to the contractual position and Hill Partnership Limited's full entitlement of a Loss and Expense claim. The decision to agree the commercial settlement minimises the risk of further delays and potential costs and financial loss due to late delivery of the student accommodation. Cabinet are requested to note the decision made.

CONTACT DETAILS:

Report Author: Keith Harley Interim Head of Development
(keith.harley@rushmoor.gov.uk)

Executive Director: Karen Edwards (karen.Edwards@rushmoor.gov.uk)

APPENDICES

APPENDIX 1: Browne Jacobsen email

APPENDIX 2: Bailey Garner Letter – Commercial Settlement

APPENDIX 3: Record of Executive Decision