

Brighton & Hove City Council

Housing & New Homes Committee

Agenda Item 40

Subject: Building and Fire Safety Act Compliance, Procurement of Contractors

Date of meeting: 15th of November 2023

Report of: Executive Director Housing, Neighbourhoods & Communities

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Ward(s) affected: All

For general release

1. Purpose of the report and policy context

- 1.1 The health and safety of our residents and those who visit and work on our council homes is a key housing service priority. The Housing Revenue Account (HRA) contains the income and expenditure relating to the council's social landlord duties covering approximately 11,900 rented properties and approximately 2,300 leasehold properties. As the owner and manager of these homes the council is responsible for the buildings compliance with legislation and regulation related to buildings maintenance and investment.
- 1.2 As outlined in previous reports to Housing & New Homes Committee, significant legislative and regulatory changes impacting on the duties of social housing landlords, including the council, have been introduced following the Grenfell Tower tragedy. In 2022 the Building Safety Act alongside the latest Fire Safety (England) Regulations were issued. We are investing in building, fire and health & safety in council homes in line with these new duties, including a programme of building surveys and enhanced fire surveys on our blocks. This investment is to make sure we continue to provide safe, good quality council homes in line with the legislative and regulatory changes impacting council housing.
- 1.3 The changes in obligations for owners / managers of residential blocks exceeding 11 metres in height require the council to undertake a significant number of building and fire safety surveys. The outcome of these surveys may include recommendations for further investigative and / or remedial works to ensure legislative and regulatory compliance.
- 1.4 This report requests delegated authority be granted to the Executive Director of Housing, Neighbourhoods & Communities to procure and award contracts exceeding £500,000 for works and services requirements arising from these building and fire safety surveys. This authority would extend to

contracts for works and services related to compliance with the Building Safety Act and relevant fire safety regulations, including the Fire Safety (England) Regulations 2022 following a complaint procurement process and within approved HRA budget/s.

2. Recommendations

- 2.1 That Housing & New Homes Committee delegates authority to the Executive Director of Housing, Neighbourhoods & Communities to procure and award contracts exceeding £500,000 for works and services related to compliance with the Building Safety Act and relevant fire safety regulations including Fire Safety (England) Regulations 2022.

3. Context and background information

- 3.1 Housing & New Homes Committee and residents have been regularly updated on the ongoing review of our approach towards health and safety compliance and assurance for council homes, including fire safety in council high rise blocks, in light of new Building Safety Act, Social Housing (Regulation) Act and fire safety regulations. In 2022 new legislation through the Building Safety Act regulations was enacted alongside amendments to fire safety requirements through the Fire Safety (England) Regulations 2022. The changes include significantly higher standards for surveying and reporting on building fire safety standards for residential properties that exceed 11 metres (m) in height. Within the council housing stock there are 45 blocks over 18m in height and 14 blocks between 11-18m in height. An additional 23 seniors housing schemes form part of this phase of works. Going forward we will be undertaking a review of 1282 council blocks of up to 11m in height.
- 3.2 The Housing Investment & Asset Management (HIAM) service has been working to secure contracts for surveyors to undertake measured surveys of the council's properties over 11m high prior to securing the further, more extensive surveys required to meet the standard of the new legislation. The measured surveys work began in March 2023 and is ongoing.
- 3.3 Housing & New Homes Committee have previously been advised on the procurement of specialist contractors to assist with meeting our legislative and regulatory requirements, including for provision of: digital floor plan surveys of our high rise blocks; external wall surveys to high-rise blocks; the Large Panel System (LPS) structural investigation surveys of 8 HRA blocks (St James House, Nettleton and Dudeney, Swallow, Kestrel, Kingfisher, Heron and Falcon) that are underway; procurement of a specialist contractor, to carry out Type 4 enhanced fire risk assessments (FRA); Procurement of a specialist contractor to carry out annual checks of flat entrance doors and quarterly checks of all fire doors in common areas.
- 3.4 At this time the extra surveys and works subject to this request for approval of delegated authority are funded from the existing HRA budget set out in paragraph 7.1 alongside the works outlined above. Committee approval for

any additional budget requirements will be managed via TBM and / or the 2024/25 HRA budget setting as set out in paragraph 7.2.

- 3.5 East Sussex Fire & Rescue Service (ESFRS) are a key stakeholder and regulator, and we work closely with them on all fire safety compliance in our buildings.
- 3.6 In order to discharge their regulatory duties, following recent inspections of 5 council high rise blocks, in September 2023 ESFRS served the council enforcement notices specifying the dates for completion of some aspects of fire safety work, ranging from the end of October 2023 to September 2024. The notices refer to work required in Clarendon House in Hove; Somerset Point, Hereford Court and Saxonbury in Queen's Park; and Nettleton Court in Hollingdean.
- 3.7 We have completed a number of the actions specified in the notices and are continuing to work closely with ESFRS to ensure full assurance and compliance with their requirements as soon as possible. It is a key priority for the Council to rectify areas where we currently don't comply with fire safety regulations. Since receiving the notices, we have been through our planned fire safety work on our 45 high-rise blocks and reprioritised the actions needed. This includes bringing forward some of the work that we have previously reported to Committee that requires specialist contractors in order that we can address all outstanding issues on the fastest timescales possible.
- 3.8 The Council has subsequently awarded a number of surveying contracts in October 2023 to address the initial requirements of these notices alongside provision to undertake the required surveys on all of the councils' relevant properties.
- 3.9 The surveys on the properties with current enforcement notices and all of the council's relevant properties are likely to result in recommendations to improve / update the fire safety standards of these properties through remedial works. They may also recommend further, more intrusive surveys. These recommendations will form an obligation both for compliance to the regulations but also to residents' continued safety.
- 3.10 The required remedial works / more extensive surveys will arise as initial surveys are completed and given the enforcement notices and other legal requirements, including potential for further action, will urgently require the council to deliver. Currently HIAM and Corporate Procurement alongside the Housing Repairs & Maintenance Service are carrying out contractor engagement to identify suitable specialists. This includes the identification of suitable frameworks and procurement compliant routes to market.
- 3.11 The current volatility of the construction market alongside high demand for specialist fire safety remedials means that the more flexibility the council has to award contracts quickly will improve how quickly remedial works can be completed.

3.12 As the values of these works is currently unknown this report aims to pre-emptively seek delegated authority to the Executive Director to ensure that appointments made (compliant with the procurement regulations) are not limited by the committee cycle. Procurement of works has to take place aligned to agreed HRA budgets which are outlined in the Finance comments in Section 7 of this report, below.

4. Analysis and consideration of alternative options

4.1 Retaining the current procedure would potentially result in a delay of up to 3 months from recommendations to the start of procurement for any remedials over £500,000 in value. This would put both the council at risk of further action from ESFRS and result in delays in works to ensure our homes are fully compliant with updated legislative requirements, including minimising fire health & safety risks for our residents.

4.2 Consideration was also given to a total collection of works, seeking delegated authority at this stage and then procurement of this in packages but as the surveys are currently programmed over the next 12 months this would result in potential delays of over a year on the recommended works / surveys.

5. Community engagement and consultation

5.1 Housing Health & Safety Update presentations have been shared with September Housing Area Panels and the Council Tenant Annual Conference. We have also engaged with Home Group, Involvement & Empowerment Service Improvement Group and Tenant Disability Network and included updates in Homing In.

5.2 We have written to all residents of council high rise blocks providing relevant fire safety instructions, including instructions on how to report a fire and what a resident must do should a fire occur. The information letter sent to existing residents is also being provided to new residents in their Tenancy Information Packs. The Council have also updated information on our website to include this detail.

5.3 In addition, we have written to all residents in the 5 blocks subject to enforcement notices to share the detail of the fire safety work we will be carrying out in those blocks. Our letter set out how to contact the Housing service if residents have any follow up questions or concerns. We also held drop-in sessions for residents.

5.4 Works that arise as a result of this review could be chargeable to leaseholders if higher value and Section 20 consultation in accordance with the Landlord and Tenant Act 1985 would be followed and agreed.

5.5 Resident engagement would be undertaken with all residents affected by any works that may arise as part of our Resident Engagement Procedure and Policy which would include in person meetings as well as general information communications.

6. Conclusion

- 6.1 In order to maintain compliance with our legislative and regulatory requirements, the Council must as a priority, on the shortest available timescales, address recommendations from fire safety surveys on its residential blocks over 11 metres in height. To do this within a volatile and high demand market the Council needs flexibility to appoint contractors quickly. Delegated authority to the Executive Director will ensure that these appointments (when over £500,000.00) are not negatively affected by the timings of the committee cycle and allow an agile approach to the procurement of works to meet our statutory duties in order to achieve the timescales required. The budget parameters within which this procurement activity will be undertaken are outlined in the Finance comments below.

7. Financial implications

- 7.1 The June 2023 Housing & New Homes Committee paper outlined the investment required to support the fire safety compliance works. It is currently estimated to total £2.808m per annum over the medium term of which £2.654m is already within approved HRA budgets for 2023/24, this includes the cost of surveys. This investment will result in the recruitment of a Fire Safety Manager (existing establishment post) and a Fire Safety team totaling £0.218m of which 50% of this will be considered to be capitalised. For surveys and works excluding the fire safety team there is an annual budget of £2.590m.
- 7.2 This is a recurring investment over the medium term and as such will form part of the part of the HRA budget paper to be presented in to Housing & New Homes Committee in January 2024 and subsequently to Strategy, Finance and Regeneration Committee in February 2024. As set out in the paragraph above any costs associated with these works which are incurred during the financial year 2023/24 have been budgeted for and will be managed within existing approved resources, due to the part year effect of spend being incurred.
- 7.3 The Building and Fire Safety Act compliance and assurance is a significant risk for the HRA, with close monitoring of the financial impacts being undertaken on a regular basis via the councils TBM process. The capital investment programme is monitored and reviewed on a monthly basis to ensure that the level of investment is adequate, if further budget is required following those reviews this will be reported via the councils TBM process to the Strategy, Finance and City Regeneration Committee.

Name of finance officer consulted: Michael Bentley & Craig Garoghan.
Date consulted: 01/11/2023.

8. Legal implications

- 8.1 The report sets out that the essential nature of the procurement needed to obtain works and services in order for the Council to remedy existing

breaches and meet core statutory legal standards for building and fire safety in respect of buildings for which the Council is the social landlord. The nature of this work is that it is required as a priority, on the shortest available timescales, and the Council is expected to take an agile approach to the procurement of works to meet its statutory duties in order to achieve the timescales required.

- 8.2 The Housing and New Homes Committee is the appropriate committee for the recommendations set out in paragraph 2 above in accordance with Part 4 of the council's constitution. In order to comply with the Contract Standing Order 3.1, authority to enter into contracts in excess of £500,000 must be obtained from the relevant Committee. The recommendations in this report will, if approved, enable officers to enter into contracts (including those over £500,000) without bringing further reports to committee. The total value of those contracts will be that set out in 7.2 above.
- 8.3 The council has a duty to secure 'economy, efficiency and effectiveness' in all its activities. The procurement of the proposed contract in a manner which attracts the most economically advantageous bid supports this principle and is in line with the relevant procurement rules.
- 8.4 The council's Legal officers will advise on the use of any framework agreements and the call off contract(s) during the procurement process to ensure that the council complies with all relevant public procurement legislation as well as the council's Contract Standing Orders (CSOs).

Name of lawyer consulted: Eleanor Richards & Natasha Watson Date consulted (01/11/23):

9. Equalities implications

- 9.1 The tender documents will include questions that ensure the bidders address all equalities considerations, both as a business and through evaluation of how they will engage with residents to ensure they give consideration to the diversity of the city's population.
- 9.2 Contractors will be expected to carry out their works in line with the Council's Fair & Inclusive Action Plan.

10. Sustainability implications

- 10.1 Bidders proposals will be evaluated for the sustainable practice and delivery which will be weighted at a minimum of 10% of the quality evaluation.

11. Other Implications

Social Value and procurement implications

- 11.1 Contractors will be asked to submit a Social Value proposal against the relevant criteria from the Social Value framework which will be evaluated at a minimum of 10% of the quality criteria.

- 11.2 This weighting may be altered through requests for specific Social Value outcomes such as delivery of a fixed number of apprentices.
- 11.3 A number of procurement compliant frameworks have been identified to address the need for remedials contractors and surveying specialists.
- 11.4 Where proposed contract values are below the relevant threshold (Works: £5.3M and services / surveys: £213k) HIAM and Procurement will collaborate on achieving best value through seeking quotations either through the frameworks identified or through request for quotations based on the value and the requirements under the contract standing orders.

Supporting Documentation

None

