

Report title: –Lambeth Housing Standard (LHS) Update

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Report summary

This report outlines the key issues with regards to major works under the Lambeth Housing Standard Programme (contract management / communications / quotes / billing), how the identified actions from previous discussions on this at OSC and the Major Works Review task and finish group are being taken forward.

Finance summary

The ongoing delivery of the Lambeth Housing Standard (LHS) programme is scrutinised to ensure the delivery of Value for Money and maximise volumes of work that can be carried out within agreed resources, with £499m spent as at March 2018.

Recommendations

To note the delivery of the LHS programme and ongoing improvements noted in the Major Works Review.

1. CONTEXT

1.1 The delivery of the LHS (Lambeth Housing Standard) programme is key in delivering the Council's Community plan in all 3 key themes: driving economic growth, narrowing the gap and in particular, maintaining and investing in good neighbourhoods. This report draws out aspects relating to the delivery of the LHS programme of works.

2. PROPOSAL AND REASONS

2.1 OSC members have requested that the areas noted below are drawn out when considering the delivery of the LHS programme and associated contract management.

2.2 Procurement

How do we incorporate the past performance of bidding companies and sub-contractors into the procurement process?

Contract award took place in 2013 and was based on tenderers' capacity to deliver specified services, submitted information from tenderers. Tenders were evaluated on a cost /quality ratio of 60/40 which is in accordance with European law. The Council's legal duty is to obtain best value for all of its residents.

The procurement was undertaken in 2012/13 under EU Procurement regulations and as part of this officers undertook a pre-qualification exercise which was focused on each bidder's experience and past performance on similar size, complexity and volume of works.

This exercise evaluated each bidders economical and financial standing and technical and professional ability. From this process Lambeth was able to select only 13 of the 22 bidders to the next stage. Bidders were asked and submitted lists of their previous experience and track record, Lambeth randomly tested these by calling for references from bidders previous clients. Only when satisfactory references were received, was the bidder invited to submit a tender

The following five LHS Contractors were approved in February 2013 with successful tenderers all being top in cost and quality evaluation. Breyers, Mears and Keepmoat/Engie were appointed with Lakehouse and Mullaley as reserve contractors.

The Council's contractual relationship is with the principal contractors noted above. Individual project schemes are agreed and implemented through task orders. When the Task order is given

to contractors, they are requested to advise the council of any sub-contractors they intend to use. The Council will set out its concerns relating to any sub-contractors used. There have been instances where this has resulted in sub-contractors being withdrawn from a project.

Residents were involved in the procurement and tender evaluation of LHS contracts and will be involved in the reprocurement of contracts required by 2020. This will offer a further opportunity to scrutinise procurement and required performance including VFM of services.

2.3 Contractor Performance

How is contractor performance assessed and how is monitoring of works carried out (including details of how resident satisfaction is taken account of in KPIs and the weight this carries)?

The contract structure is based around the NEC contract family amended to suit the specific needs of Lambeth. The selected contract is NEC Term Service Contract (Option C) (TSC). The Contract uses open book target cost approach with a pain/gain mechanism. In essence, this enables the Council to scrutinise Contractors’ accounts to identify what it has actually cost to deliver LHS projects. Contractors must bear the costs if they exceed the agreed contract sum without prior agreement. If contractors can offer reduced costs, the difference is shared between the Council and Contractor. The contract also provides performance related payments, where certain performance targets should be met for contractors to receive their full allocation of the task order payments.

The prices for service is based upon, works valued using schedule of rates, preliminaries using percentage adjustments on works value and overheads.

Performance of the contractors is agreed when contracts are procured, after which any changes required to performance indicators must be negotiated.

Performance of the contractors is managed through a range of mechanisms from performance set out in the tender, contractual requirements in a Task Order, to performance being assessed and monitored through robust checking of their works on site by frequent visits of Lambeth’s contract administrators and project managers. This is followed on with monthly site progress meetings, risk meetings and monthly performance and financial monitoring, although final project performance can’t be validated until project completion.

Contractors’ performance is monitored and managed in various ways as below

- The tender, project specification and project task order sets out agreed performance, on works to be carried out, materials and methods used.
- Using key performance indicators. There is a suite of KPIs used of which resident satisfaction carries 20% of the total performance score
- Financial incentive: Contractors payments (2.5% performance) is linked to the KPIs and Depending on their performance they will receive full or part of their performance payments
- In addition to the performance indicators the contract also carries a default rectification mechanism. This is a 3 step process (default notice, remedy notice, critical default notice) and at the end of this process the contractor is treated as breached the contract requirements and contractual process will be followed , through Contract adjudication, to legal action. The council has removed a major works package of over £2m from a Principle contractor and awarded such to the reserve contractor.

Contractual KPIs

KPI Ref	LHS Contractual KPI's	Lower Target	Upper Target	Weighted Score
RSKPI 1B	Satisfaction	85%	90%	20%

QKPI 1	Quality	85%	90%	30%
CKPI 1	Cost	85%	90%	30%
TKPI 2	Time take to complete works	90%	100%	10%
SKPI 1	Waste-recycling	70%	90%	10%

The following is performance relating to completed projects during 2017 /2018 with the detail in

Retention Amount £	Retention Release %	Retention Release £	PPD* £	Satisfacti on	Qualit y	Cost	Time	Waste Sustainability
£825,656	77%	£695,029	£130,626.73	93%	97%	94%	85%	86%

*Payment Performance Deduction-2.5% of the value of works is retained and will not be released to contractors until the end of works unless target performance has been delivered.

2.4 Major Works Review

Cabinet during its meeting on 14 July 2014 considered the outcome of the review of Leasehold Services and Major Works, including the report of the Task and Finish Group, and agreed that improvement actions set out within the Leasehold Action Plan were progressed and tracked.

The findings of the Independent Expert (IE) presented to the resident led, Major works committee in October 2016 noted that "Lambeth have learnt many lessons through the process and our investigations of the nine projects. There is clearly a process of continuous improvement in place."

Further scrutiny has been undertaken of the delivery of the LHS Major works programme, all of which when considered as a whole evidences that the delivery of major works is fit for purpose, yet certain improvement actions should be progressed.

The IE recommended that ongoing improvement all of which are being addressed focusses on;

- Targeting consultation and communication , clearer and more focussed information
- Working with leaseholders to help them understand their lease
- Ensure that works specifications and costs are correctly transcribed in leasehold consultation documentation
- More detailed stock surveys prior to commencing work
- The increased use of the new Asset Management data base Keystone-to facilitate contract management
- Review procurement options.

Ongoing improvement actions relating to Major Works and leaseholder billing are listed below:

Ref	Key Actions	Updates
1	Confidence building - That tenants and leaseholders be given confidence that the Council would ensure:	
1a	good quality	The Council's scrutiny process includes external Technical surveys, physical post inspections, independent phone surveys and the external examination of costs, reported through the Council's Investment and contract performance team (External to the Major Works team) and through Residents 'engagement forums. –see also para 6 below.

Ref	Key Actions	Updates
1b	value for money housing works	The Council examines final accounts to make sure costs charged are accurate and in line with tendered rates. ME contracts have been retendered. LHS contracts are currently benchmarked to inform contract extensions / review. Resident reps have been involved in previous LHS procurement and are being involved in the current LHS reprocurement –see paragraph 2.2.
1d	consistency of works	Contract administrators, quantity surveyors, Project managers carry out physical post inspections out in-work inspections to make sure works are to the right standard and the right materials are used.
1e	scope of works	The 2016 Asset Management Strategy includes Responsive, planned, Major works and regeneration, works must be fit for the long term. Scope of works will not be automatically reduced as a result of leasehold challenges, unless there is a technical reason to do so.
1f	reporting of issues	Feedback from inspections and satisfaction surveys are used to inform contract performance meetings and the development of the service.
1g	outcomes are identified: i - on budget/less/more, why ii - satisfaction went well / didn't	Capital review meetings are held on a monthly basis and scrutinise; Cashflow, risk management, performance management of each project. Monitoring information is held at an outcome and detailed input basis. Monitoring data is currently being agreed with Leasehold council reps.
1h	cost comparison information	LHS external scrutiny considered costs and pricing. The LHS extension scrutiny 2017 included cost comparison with other providers. The decision to extend rather than go to the market in 2017, resulted in savings of £11m.
1i	programme of works planned in advance and open to the public	The annual LHS programme is on the Lambeth website updated monthly and considered with relevant engagement forums. The LHS completion programme 2019/20 once agreed will be updated on the website-see paragraph 5.
2	Communications	See paragraph 5 below. In terms of leasehold communications ; Pre-sale packs will be informed through the new Asset Management stock data base -Keystone Transparency on the process from estimates to final billing will be publicised more widely. Further communications with Leaseholders will be undertaken Interim billing and sect 20-will be simplified The lease obligations-council and Leaseholder will be considered more
3	Keeping tenants/leaseholder/TRAs informed;	See para 5 below.

Ref	Key Actions	Updates
	<ul style="list-style-type: none"> • what is going on when • appropriately qualified and suitable officer to take responsibility for effective liaison, communication, etc. • view online job progress (so people don't have to go through sub-contractors etc. 	<p>Each project is on the website and has a communications plan. The early consultation process aims to build links with Tenants and Residents associations. Residents are invite to ongoing site meetings.</p> <p>Closer liaison with the Area teams, Home Ownership services (HOS) and major works teams should ensure that relevant officers manage and input into each stage of the communication plan</p> <p>The council uses it new database Keystone for the management of Major Works. In future this may enable online reporting with regards to the LHS programme, so that residents can self-service.</p>
	That outcome reports be produced for all major works	Handover packs detailing Contract work, resident satisfaction surveys, warranties are held on the database for each address and project.
4	Issues raised:	
4a	capping leaseholder charges for works	<p>Capping of leaseholders repair costs has been revisited in the service charge Reductions Directions (2014). There were two sets of directions; mandatory which applies to Government funded works and discretionary which gave the Council powers to cap in certain circumstances.</p> <p>Mandatory Directions (2014). Social landlords must cap service charges for Repairs/Maintenance/Improvements at £15k if:</p> <ol style="list-style-type: none"> a) The service charges exceed £15kin any 5 year period AND b) The leaseholder is resident AND c) The cost is assisted by Decent Homes Backlog funding (or any other central government funding) AND d) The applications for assistance was after 11 August 2014 <p>Discretionary Directions (2014). Social Landlords can reduce service charges after having had regard to:</p> <ol style="list-style-type: none"> a) Any estimates of cost of works given before purchase b) Whether price paid for dwelling took into account the cost of the works c) Increase in value of dwelling or other benefit (e.g. energy efficiency) d) Exceptional hardship of lessee taking into account: <ul style="list-style-type: none"> - whether flat is lessee's only home - total service charges paid since purchase - total service charges in year of application - financial resources - ability to raise funds (e.g. mortgage) - ability to pay over a longer period <p>any other relevant circumstances of lessee</p> <ol style="list-style-type: none"> e) Any other circumstances the social landlord deems relevant <p>It should be noted that capping of costs would lead, in general, to any shortfall being borne by the Housing Revenue Account and would need to be covered by rent or other receipts generated. The Repayment options plan does have a hardship scheme in</p>

Ref	Key Actions	Updates
		place; this allows leaseholders to defer payment of major works costs in certain circumstances.
4b	opting out of works	Leaseholders are only charged their apportionment of communal and structural works, their liability to contribute is detailed within each lease. It is not possible for leaseholders to opt out of works as this may mean that the delivery of works e.g. communal heating, external appearances e.g. windows may compromise the efficiency of communal systems/ may not be in accordance with planning requirements.
4c	sink fund to be developed to help cover the cost of future works	Developing sinking funds would require changes to current leases. It would be unlikely that the Council would be successful in varying leases unless there was an agreement from each leaseholders. The best option for managing the issue would be for leaseholders to be made aware of future works and to set up their own savings account. There are also affordability issues to consider and leaseholders may not be able to pay sinking fund contributions. Having regard to the above, the position will be reviewed once all homes meet LHS standards, otherwise it may be complex to administer a sinking fund where contributions are carried depending on the amount of works required.

2.5 Leasehold service Charging

How do we notify leaseholders about service charges?

We notify Leaseholders in accordance with the lease and legislation. Our standard lease states we may specify an 'interim payment' – an advance service charge payment – and then after the sign-off of costs for the year provide details including credit for any interim payments made. This is standard industry practice.

Why is there confusion about final bills now?

Billing prior to 2013

Prior to 2013, homeowners were expected to pay on receipt of the final account based on actual costs. In principle they would therefore have received initial Section 20 documentation detailing the scope of the work, and a formal demand for payment once the work had been completed and its costs calculated, based on actual work carried out and actual costs.

Billing from 2013-16

In 2013 Lambeth Living made a decision to move from billing solely on final account to "interim" billing. In respect of major works, this meant that Leaseholders would be based on estimated costs. Estimated costs may vary from final costs depending on unforeseen works that may be required which are not apparent at the time estimated costs based on estimated works are drawn up.

The change to interim billing was partly in response to the Upper Tribunal case *London Borough of Southwark v Dirk Andrea Woelke*, in which the Tribunal determined that the landlord should notify and bill charges strictly in accordance with the lease. However, as there was a reluctance to completely reverse the earlier policy by billing on estimate, Lambeth Living attempted to develop an arrangement where demands for payment were made only after work had actually started on site.

In practice homeowners have received a mix of Section 20 invoices, "interim" invoices and "start on site" letters. In the latter case, a letter was sent within 2 months of work starting on site in which homeowners were asked to enter into a payment arrangement within 6 weeks. While this means that, unlike in years prior to 2013, homeowners were more likely to receive a demand for payment, the various approaches created a degree of confusion with staff and homeowners themselves.

Major Works Charges from 2017 onwards

As a result of the previous billing practices the Council has moved fully to billing in advance on estimate from the 2017 financial year. We have taken a number of actions to address the current situation:

- Further certainty to works that may be required for example using drones to carry out high level stock surveys have been carried out. This informs section 20 notifications.
- For the LHS 2019/20 programme, consultation with Leaseholders and Tenants will be brought forward with informal notifications to leaseholders on indicative works and costs in September, with firmer estimated costs in section 20s scheduled for notifications in October ahead of interim billing.
- Home Ownership Services (HOS) are now ensuring that Section 20B notifications are sent whenever costs have been incurred on a major works project but where it is not yet possible to issue a final account. An annual run of S20b notifications will be sent in September / October at the same time the actual costs for the day to day service charges are issued. This will protect the Council's financial interests by ensuring that there is no possibility of costs becoming unrecoverable due to the 18 month rule.
- From 2017 onwards we have moved to invoicing fully on estimate, rather than producing interim or "start on site" documents. This will simplify and clarify what homeowners need to pay and when they need to pay it. It will considerably simplify accounting and will make it easier for staff to track the current status of a scheme. In addition to being common industry practice, it is also in line with the terms of the Lambeth lease, which specifies that the leaseholder should make an advance contribution at the time of paying the ground rent.
- Since April 2017 we have also introduced invoice based accounting. This gives each invoice a unique identifying number on the account and allows payments to be related to specific invoices, assisting both council officers and homeowners themselves in understanding which amounts are due and when.
- HOS will continue to demand payment in cases where a final account is produced even if demands for estimated or interim costs have not been served, or if S20B notices of incurred expenditure have not been served. The Council's position is that the contract correspondence sent to homeowners as a matter of course would have made them aware of proposed expenditure even in the absence of earlier formal demands.

2.6 Social Value

What do we (or can we) do to secure social value (e.g. job creation) through these contracts?

The Public Services (Social Value) Act 2012 requires those commissioning or procuring public services contracts to consider how the work can improve the wellbeing of the area.

The Council developed an Employment and Skills toolkit (ESP) which the contractors complete on a quarterly basis. The toolkit includes the minimum outcomes required for bands of contracts sums. The toolkit uses the Housing Associations' Charitable Trust (HACT) methodology to calculate well-being social value because it was easy to compare and extremely cost effective to use.

The HACT values are calculated through statistical analyses of four large national UK datasets that contain data on wellbeing and life circumstances:

- British Household Panel Survey (BHPS)
- Understanding Society
- The Crime Survey for England and Wales
- The Taking Part survey

Many housing providers use the HACT methodology and our contractors are familiar with it from using elsewhere. In fact, some (Mears, Engie and Mitie) have commissioned some of the work the HACT model uses.

2.6.1 The target is based on the values of both capital and revenue contracts. Under the LHS contracts approximately 1% of contract spend was to be spent on community benefits, primarily employment and training opportunities for Lambeth residents. It should be noted that none of these targets are contractual now as the contract sums are below the banding thresholds in the LHS contracts and there were no targets in the LPC (Lambeth Property Contracts) contracts. Contractors are still expected to deliver community benefits although this cannot be enforced.

2.6.2 Performance updated to 2017/18

The social value table (Employment Skills Plan) needs to be understood within the context of Lambeth's Social Impact. That is targets were refined in 2017 to reflect more achievable outcomes so that any Lambeth resident securing employment with the contractor would enhance value as would offers of work experience. We have introduced more flexibility to allow contractors to achieve overall targets rather than each specific outcome. As a result, residents securing employment outcomes with contractors, would attract greatest values.

For 2017/18, the following outcomes were achieved:

Table 1

Employment & Skills Area	No. of participants	Target value HACT	Performance (HACT)
	147	£374,935	£374,849
Work experience placement - persons	14		£30,879
Curriculum Support activities - Individual engagement	68		£87,815
Permanent employment	14		£164,797
Apprentices	22		£86,574
Apprentices sponsored with other employers	2		£4,784

The target has been revised down over the year because of changes to spend but is a lot lower than 2016-17 because of the significant reduction in the contract sums (36%), mainly due to the reducing capital programme.

Social value performance is considered on a cumulative basis, year on year as partners continue to ensure that well-being social value benefits are generated for residents.

Additional 'softer' benefits of community hall/maintenance, funding for community events, children play areas and community projects are also generated.

Table 2 – contractor performance 2015-18

	2015/16	2016/17	2017/18	cumulative
Total contract value	£80,138,142	£116,221,202	£69,714,871	£266,074,215
Social Value target	£574,696	£658,648	£374,935	£1,608,280
Social Value generated	£739,324	£806,448	£374,849	£1,920,621
cumulative performance	129%	122%	100%	119%

The LHS programme for 2018/19 is £35m, and officers are driving Contractors to continue supporting Social Value offers.

3. FINANCE

- 3.1 As the programme is delivered, estimated investment need and costs are firmed up into actual need and costs. In reality, once on site it has been identified that more works were required than projected. More detailed stock surveys have been carried out which has identified the investment need projected to bring remaining homes up to LHS standards. Resources to deliver the remaining LHS programme will be reviewed as part of the Council's annual budget setting programme.
- 3.2 The LHS programme was initiated in 2012. By the end of 2018/19 Lambeth will have committed £534m towards bringing all homes up to LHS with resources in the current year of £35m, and the LHS Indicative programme 2019/20 resourced at £35m. Further Fire Safety works will add pressures to the demands on the Housing Capital programme and will be reviewed as they arise.
- 3.3 LHS contracts have been reviewed and it is noted that tender prices have increased by 27% since 2011. LHS contract prices have been fixed at the time of contract award for 4 years with a possible extension of 2 years to February 2020. The extension has been approved by the Council's Procurement Board, which noted the saving of a possible £11m, if the council were to re-procure in the market in 2017 as opposed to extending to February 2020.

4. LEGAL AND DEMOCRACY

- 4.1 The EU procurement regime applied to the award of these contracts by virtue of the Public Contracts Regulations 2006. These contracts were procured under the restricted procedure as set out in those regulations.
- 4.2 Regulation 30 provided that a contracting authority must (subject to certain provisions) award a public contract on the basis of the offer which is the most economically advantageous from the point of view of the contracting authority, or offers the lowest price. In deciding which offer is the most economically advantageous the Regulations require the council to use criteria linked to the subject matter of the contract including quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service, technical assistance, delivery date and delivery period and period of completion.
- 4.3 The contracts will dictate how the contract is monitored and what are the rewards/penalties for good or poor performance of contractors and sub-contractors.
- 4.4 Section 19 of the Landlord and tenant Act 1985 (the Act) provides that service charges can only be recovered to the extent that they are reasonably incurred, and where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.
- 4.5 Section 20 of the Act limits the amount of service charges that can be recovered from leaseholders in respect of qualifying works or works/services under qualifying long term agreements to £250 or £100 respectively, unless the landlord has either complied with the consultation requirements set out in regulations, or in the alternative obtained a dispensation from the appropriate tribunal
- 4.6 Section 20B of the Act provides that if any of the costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the leaseholder, then (subject to subsection (2)), the leaseholder is not be liable to pay that amount. However this provision does not apply if, within the period of 18 months of the date when the relevant costs were incurred, the leaseholder was notified in writing that those costs had been incurred and that they would be required to contribute to them by the payment of a service charge.

5. CONSULTATION AND CO-PRODUCTION

- 5.1 The delivery of major works often in occupied properties through agreed contractual processes is difficult as was acknowledged in a First Tier Tribunal in 2017.

5.2 In order to provide greater transparency, detailed scrutiny has been undertaken since 2014. The Task and Finish group scrutiny involved residents and was chaired by the Cabinet member, and reported through cabinet, Tenants and Leaseholder representatives chaired the 2016 Major works committee.-ongoing improvement actions are noted in this report.

5.3 Information discussed with residents can be found in the following link, with updated information communicated through public meetings, project meetings , individual home visits, newsletters for each project;

LHS What to Expect

5.4 Communications plans support resident involvement through each Major works project with residents encouraged to attend monthly progress meetings where they can scrutinise the progress of works undertaken where they live, there is a need to continuously engage with resident representatives who have not undertaken the same degree of scrutiny as involved above.

5.5 Further involvement and awareness of the delivery of Major works through LHS contracts with Members and residents representatives, are being held in September.

6. RISK MANAGEMENT

6.1 Risks are managed in accordance with contractual requirements on a monthly basis through Capital Review meetings with mitigating actions taken throughout the duration of a project where required. With Strategic Risk reported through the Councils Corporate risk register

7. EQUALITIES IMPACT ASSESSMENT

7.1 An EqIA was carried out when LHS contracts were procured. Ongoing Monitoring of Social Value is noted above. Sample satisfaction surveys carried out have not found adverse impact relating to any particular Equality Characteristic.

7.2 Resident liaison officers take particular account of residents 'needs when carrying out internal works. There have been instances where Contractors should have provided more support e.g. Works to sheltered housing, vulnerability needs of residents when carrying out external works. Safeguarding responsibilities have been reviewed, with check lists developed for all Contractors to have regard to whenever they carry out any works to homes.

8. COMMUNITY SAFETY

8.1 Contractors must use their technical expertise to ensure that work is carried out in accordance with Health and Safety requirements which is then monitored in accordance with Construction Design and Management statutory requirements, and monthly as part of Risk management.

8.2 The approach taken relating to Fire Safety was last reported to Corporate Committee during its March 2018 meeting.

9. ORGANISATIONAL IMPLICATIONS

Environmental

9.1 Sustainability is a contractual requirement that LHS contractors must address, with the Waste KPI recording performance.

Staffing and accommodation

9.2 Contract management training and awareness is provided to LHS Delivery staff, consultants and contractors.

Procurement

9.3 This was covered in the main body of the report in para 2.2.

Health

9.4 A Housing Health Crime Impact Assessment carried out by Sheffield Hallam University which draws out how the impacts on Health and Crime experienced by Tenants and Leaseholders could be reduced from investing over £500m in the council's stock is at present being finalised.

10. TIMETABLE FOR IMPLEMENTATION

10.1 The LHS programme is agreed annually and consulted on, as detailed in the Programme and project communication plan.

10.2 Contract Management is an ongoing service requirement.

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