

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

4241

Author:

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Department:

Development and Growth

Contact:

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Subject:

Kilpin Way

Total Value:

Up to £50,000 (Type: Capital)

Decision Being Taken:

1. To approve dispensation from Contract Procedure Rule 4.1.2 in accordance with Financial Regulations 3.29 to make a direct contract award for the construction of Phases 1 and 2 of Kilpin Way for the reasons set out in this report.
2. To approve expenditure of up to £50k for fees to liaise with contractors, undertake quality checks, certify satisfactory completion, issue staged payments in arrears and undertake any necessary legal work;
3. To note that Delegated Decision Ref 2800, accepting Homes England funding for the scheme, delegates responsibility for entering into contracts and making payments to the Chief Executive, however, this report seeks Portfolio Approval for dispensation from Contract Procedure Rules.

Reasons for the Decision(s)

In March 2017, the Council was awarded £1.25m from the then Homes and Communities Agency (now Homes England), for infrastructure development in the Waterside Regeneration Area, and specifically for the construction of a new spine road and associated public realm linking Trent Basin to Poulton Drive. The road will also provide pedestrian access to a new primary school due to be operational in September 2023. Plans for the school are now progressing and land ownership issues have been resolved such that the delivery of the school and road can proceed.

It was intended that Major Projects would lead procurement of design and delivery of the new road which would be adopted as public highway. However, due diligence at planning stage has identified a number of risks and liabilities for the Council due to complexities associated with accessing third party land, multiple contractors being present on adjacent sites, limited compound areas and the risk of ongoing construction access over the new road alignment during different phases of housing construction. In addition, any changes to the adjacent schemes (which are outside the control of the Council) may have an adverse impact on the road design and potentially increase costs and delay the works.

As with other construction schemes, alternative approaches have been considered including delivery via a direct award to the developer on site. In this instance, the works would be delivered to an agreed specification and would be subject to regular quality checks and payments issued in arrears on satisfactory completion. Warranties relating to works would be extended to NCC. This is the preferred approach and would:

1. Minimise the risks and liabilities of the Council directly undertaking the work;
2. Ensure that the delivery is completed without undue delay caused by multiple contractors and breaks in works to allow access/repair damage;
3. Ensure that the scheme is delivered to an agreed specification and quality suitable for adoption by the Council.

In recommending this delivery route full consideration has been given to State Aid and EU procurement rules, value for money and ensuring that the scheme will be delivered to the appropriate standard capable of adoption by the City Council. Further details are set out in the accompanying briefing document.

Briefing notes documents:

Briefing Doc Kilpin Way PHD.docx

Other Options Considered:

1. Scheme procured directly by NCC. This was the intended option but has been rejected due site complexities of multiple contractors on site and on third party land which is likely to result in increased risk, liabilities and ultimately costs for the Council.
2. Delay works until adjacent contractors works are completed. Rejected as the road links to the provision of a new primary school due to open September 2023.
3. Do not undertake the works and repay grant awarded. Rejected as the road will provide a public route integrating Trent Basin with the wider Waterside and supports the aims set out in approved Planning Guidance for the area.

Background Papers:

Kilpin Way Plan

Unpublished background papers:

20210422 Kilpin Way.pdf

Published Works: Delegated Decision Ref 2800
Planning Approval for Construction of Kilpin Way Ref 20/02072/PFUL3
Waterside Supplementary Planning Document

Affected Wards: Dales

Colleague / Councillor Interests: Councillor David Mellon is a Director of Blueprint and therefore is not party to this approval.

Any Information Exempt from publication: Yes

Dispensation from Financial Regulations: Yes

Exempt Information:

Description of what is exempt: Legal comments

An appendix (or appendices) to this decision is exempt from publication under the following paragraph(s) of Schedule 12A of the Local Government Act 1972

5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

The public interest in maintaining the exemption outweighs the public interest in disclosing the information because it permits the decision maker to receive full and frank advice about legal issues without adversely prejudicing the City Council's ability to consider and manage those issues.

Documents exempt from publication: kilpin way.docx

Consultations:	Those not consulted are not directly affected by the decision.
Crime and Disorder Implications:	Nottingham City Council will ensure that any development within the Waterside contributes to reducing crime and improving the quality of life for communities and citizens.
Equality:	EIA not required. Reasons: An EIA is not required as the decision does not relate to a new or changing policy or service.
Decision Type:	Portfolio Holder
Subject to Call In:	Yes
Call In Expiry date:	16/06/2021
Advice Sought:	Legal, Finance, Procurement
Legal Advice:	This advice is exempt from publication and is contained within an exempt appendix Advice provided by Andrew James (Team Leader Contracts and Commercial) on 25/05/2021.
Finance Advice:	<p>The expenditure identified within this decision is already within the approved Capital Programme and as such following the approval of this decision the Capital Programme will not be amended. The grant funding associated with this spend is secured and held on the Council's balance sheet.</p> <p>The project manager is required to be able to evidence as necessary that the direct award as recommended in this paper provides Value for Money for Nottingham City Council.</p> <p>The dispensation from financial regulations is supported on the basis that it can be evidenced that the direct award is value for money for the Council.</p> <p>As this expenditure is already within the current Capital Programme it does not require endorsing by the Capital Board. In addition to this as the expenditure is entirely funded by external grant it is outside the current amended scheme of delegation.</p> <p>Advice provided by Tom Straw (Senior Accountant - Capital Programmes) on 26/05/2021.</p>
Procurement Advice:	If the dispensation to Contract Procedure Rules to make a direct award is approved then there are no direct procurement implications to the decision being sought. Advice provided by Jonathan Whitmarsh (Lead Procurement Officer) on 22/04/2021.
Signatures	<p>Sam Webster (PH Finance and Resources)</p> <p>SIGNED and Dated: 09/06/2021</p>

Michael Wayne Bexton (Interim CD for Growth & City Development)
SIGNED and Dated: 02/06/2021
Clive Heaphy (Chief Finance Officer/CD for Finance & Resources) - Dispensation from Financial Regulations
SIGNED and Dated: 27/05/2021
Chief Finance Officer's Comments: