CABINET

19 September 2023

Title: Gascoigne East Phase 3B Development – Revised Proposal	
Report of the Cabinet Member for Regeneration and Economic Development	
Open Report with Exempt Appendix 1 (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972)	**For Decision**
Wards Affected: Gascoigne	**Key Decision:** Yes
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Accountable Director: Tim Porter, Director of Delivery, Be First	
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Summary

By Minute 43 (18 October 2022), Cabinet approved proposals to enter into a contract with Wates for the delivery of 334 new homes in Gascoigne East Phase 3B (GEP3B) under a JCT Constructing Excellence Contract for a target cost of £142,061,994. This sum included an inflation allowance of £6.8m.

The works contract was split into three sections to allow design, enabling works, demolition and market testing of the contract packages under sections 1 and 2 and Main Works under section 3. The contract and approval provided that in the event that the target price could not be achieved following market testing of the contract packages, the scheme would be brought back to Cabinet for a decision on the way forward. The contract allows for termination of the contract if the target price cannot be achieved.

Market testing of the contract packages established that the Target Price could not be achieved. The increased cost is primarily due to delays to vacant possession adding considerable programme delay and cost and build cost inflation having continued to outpace expectations. From an initial contract package return price of £161,000,000, supply chain negotiations have resulted in an offer put forward by Wates of £147,996,637.

Although this is a higher price than that put forward to Cabinet in October 2022, external factors have had a significant impact on the ability to deliver the scheme at the originally approved target price. In order for the scheme to meet the established IAS metrics, including producing a positive cumulative cashflow in year 1, a series of proposed actions to make the scheme viable are set out in the report.

Recommendation(s)

The Cabinet is recommended to:

(i) Approve the recommendation to proceed at the new Contract Sum agreed with Wates at £147,996,637;

(ii) Approve the revised Total Development Cost of £174,657,138 including forecast capitalised interest (£169,256,073 exc. interest);

(iii) Approve Option 1 (Proceed with Wates) and steps 1 to 4E as the most viable proposal that meets the IAS metrics and the steps required to achieve this position;

(iv) Approve the handover loan to Reside at £96,080,179, comprising £75,170,844 for Affordable Rental homes and £20,913,031 for the London Affordable Rent homes;

(v) Approve in principle the use of LBBD funding of up to £5,987,703 for the Public Realm works to be funded from the future disposal of commercial asset(s) or Section 106 monies. (For example, sale of Restore or S106 monies from Fresh Wharf);

(vi) Approve the revised use of Right to Buy Receipts of up to £52m to support the viability of the Affordable Rent homes and 3-4 bed London Affordable Rent homes;

(vii) Approve the revised use of GLA Affordable Housing Grant of £6m and GLA Right to Buy Ring Fence Monies of £9,754,813;

(viii) Approve the allocation, subject to the endorsement of the Assets and Capital Board, of £1,771,784 of S106 contributions to support the viability of the LAR homes or the delivery of public realm; and

(ix) Note that Scenario 4E meets the IAS return metrics producing a Net Present Value of +£40m and a positive cumulative cashflow in year 1.

Reason(s)

The proposal delivers new homes contributing to the following priorities set out within the Corporate Plan:

- Residents benefit from inclusive growth and regeneration.
- Residents live in, and play their part in creating, safer, cleaner and greener neighbourhoods.
- Residents live in good housing and avoid becoming homeless.

The scheme accelerates the delivery of new homes adding to the Council's residential portfolio with new energy efficient stock.

1. Introduction and Background

1.1 The purpose of the report is to set out the current contract position for the Gascoigne East Phase 3B (GEP3B) Contract and to seek approval for instruction to be given for Wates Construction Ltd (Wates) to proceed with the delivery of Section 3 of the JCT Constructing Excellence Contract (JCTCE) for the revised Contract Sum of £147,996,637.

1.2 Resolution to grant planning permission was given in April 2022 and Cabinet approval was given in October 2022 to enter a JCTCE with Wates to deliver 334 new homes in GEP3B for a Gross Maximum Price (GMP) of £142,061,994, inclusive of an inflation allowance of £6.8m.

1.3 Due to concerns over prevailing market conditions at the time regarding material scarcity and supply chain inflation and to protect the Council's position, a JCTCE was utilised. The JCTCE to be delivered in three sections: -

- Section 1 – Detailed Design and Package Tendering
- Section 2 – Demolition and Enabling Works
- Section 3 – Main Works

1.4 This reflects a fairly typical procurement, except that all works and services are to be carried out under one contract, rather than issuing separate pre-construction service agreements and enabling works contracts.

1.5 One of the drivers in pursuing the JCTCE contract was that this form of contract is premised on a collaborative approach to obtaining package prices and their scrutiny once received to get the best price and works package for the project.

1.6 A further driver for entering a construction contract was to safeguard the existing planning permission and the building control position before the implementation of forthcoming changes to building control requirements, specifically the requirement for the inclusion of a second staircase in buildings over 30 metres in height. GEP3B was approved by the GLA in February 2023 as compliant with building regulations and includes sprinklers to the residential units in the mansion blocks.

1.7 In March 2023 the Mayor of London unilaterally introduced a policy that all buildings over 30 metres will have to have a secondary staircase in each core to receive GLA Stage 2 approval without which a scheme's planning consent will not be valid. GE3B Stage 2 approval was achieved in February 2023.

1.8 The JCTCE contains two alternative options for payment: by reference to a Target Cost(s) or by reference to a contract Sum. If the revised contract sum is approved by Cabinet in effect the contract sum becomes fixed at £147,996,637 subject to the risk items highlighted below.

1.9 The s1 contract allowance was £5,877,892 which remains unchanged.

1.10 The s2 contract allowance was £4,378,157 and this has increased by £330,993 to £4,709,090, due to need for an updated bat survey, settling metre debts on vacated properties, the design and construction of 2 substations that UKPN have insisted are provided and forward funding of meaningful works to safeguard the Building Regulations position.

1.11 During Sections 1 and 2 Wates were required to carry out market testing on those sums identified as falling under section 3. At the time that Cabinet approval was sought in October 2022, the scheme investment performance was stated as follows:

Investment Metrics	Oct 2022
Net Development Cost (Total scheme costs less any subsidy)	£138m
Cumulative Breakeven Year	Year 44
Cumulative Surplus at YR50	£36,990,642
IRR	4.49%
Net Present Value	-£15,885,868

1.12 The agreed contract included a break clause that can be operated at the Council's option in circumstances if, prior to the Commencement Date of the Services for Section 3, as a result of the Market Testing being undertaken as part of the Services under Section 1 and 2 it is determined that the Contract Sum for the whole of the Services (i.e. Section 1, 2 and 3) shall be, or is likely to be in excess of the Guaranteed Maximum Price (provided a minimum of 80% (by value) of the packages subject to Market Testing having been completed).

1.13 Wates submitted their tender in Jan 2022 on package prices that they had received from their supply chain in the months and weeks prior to their tender submission as is usual practice at the time but build cost inflation has meant that rules of usual business practice cannot be relied on in this period of hyperinflation.

1.14 Following completion of the market testing exercise, it is forecast that the Contract GMP of £142,061,994 will be exceeded. Wates have stated that they are continuing to see price increases in their supply chain and that their works and material subcontractors are pricing to ensure that they can supply materials and works for the contract but also in a way that ensures that they themselves do not get caught out by fluctuating prices.

2. Proposal and Issues

2.1 The proposal and recommended option is to continue the project with Wates on the basis of a Gross Maximum Price ("GMP") of £147,996,637 with a Practical Completion date of May 2026. This is termed option 4E in the tables below)

2.2 Wates are already on site and are well placed to deliver the scheme in accordance with the current programme, delivering on promises that have been made to the local community and to the wider Barking and Dagenham electorate, enhancing local life chances and regenerating the local area.

2.3 This option also means that the current planning consent and building control position would be utilised, avoiding the need for costly redesign of the scheme and the need to apply for a new planning consent to meet changed regulations.

2.4 Costs have been spent to safeguard the building regulations position, meaningful works consisting of drainage works to each of the blocks at a cost £80,000 is in progress.

2.5 If the planning consent is not implemented the costs for these works would likely be wasted. Any new scheme complying with the new building regulations could result in changes that mean that the drainage being installed now is in the wrong place and therefore these costs would be abortive.

2.6 As part of the planning application, a total CIL liability was incurred for the development of £2.1million. An application for relief for existing floorspace as allowed under the CIL Regulations was made to LBBD CIL officers and this reduced the CIL liability to £1.2m.

2.7 Deciding not to proceed with the scheme and failing to build it out would mean that a new liability would become due on any new planning application. Any CIL monies paid cannot be used against a new planning application and CIL payment would become due. The existing floor space credit would also be forfeited.

2.8 BCIS are still reporting on going inflation as set out in the table below based on tender returns of up to 18 months to the date of publication.

BCIS Inflation forecast Apr 23			
6 months	12 months	18 months	24 months
1.06%	2.09%	3.69%	5.80%

2.9 Our consultants Faithful and Gould (F&G) estimate that going forward the regulatory changes being introduced to building regulation to parts B: Fire safety, F: Ventilation, L: conservation of fuel and power, Part O: Overheating and Part S: Infrastructure for electric vehicles will likely add between 5-7% to build costs until the supply chain establishes the most efficient way to deal with the changes.

2.10 F&G have also estimated that a build price following a retendering exercise, excluding contingency design fees for planning, CIL is likely to be in the region of £170,000,000. This figure includes compounded interest from Q2 2023 to a start on site date of Q2 2025 and includes cost allowances to meet changes in building regulations and secondary staircases.

2.11 Upon first application to the GLA for Affordable Housing Grant (AHG) a grant of £90,000 per unit was able to be secured to support the viability of the 90 London Affordable Rent homes (LAR). Following negotiations with the GLA, Be First have been successful in increasing this rate to £150,000 per LAR unit making the total AHG support from the GLA of £13,500,000. This has been able to be claimed against 90 LAR units under “reprovision option” which no longer exists, i.e., has been withdrawn by the GLA and they are no longer considering allowing AHG claims for re-provision of council homes lost in redevelopment plans.

2.12 If the current planning consent is not built out this would mean that Be First/LBBD would still have an obligation to provide the lost social housing homes on this estate as the obligation runs with the land but with the possibility that AHG could not be secured at the same rate. Under GLA rules currently in effect 90% of the AHG has already been drawn down by Be First/LBBD and would have to be repaid to the GLA.

2.13 In additional to the GLA AHG mentioned above, agreement to use Right to Buy Ringfence receipts of £9,754,813 has been reached with the GLA which can claimed upon LBBD signing the GLA's Ringfence agreement. This is an increase from £4.7m in Oct 2022 due to changes in the amount of RTB receipts that can be allocated towards the costs of build scheme from 30% to 40% per unit. The GLA have made us aware that failure to sign the Ringfence agreement could result in the monies being lost. LBBD's RTB contribution has reduced from £9.1 to £4.9 which represents 40% of the cost of the affordable rent homes.

2.14 Total costs have increased by £8m, this has been partly offset by the increases in grant, which is set out in the table below, which improved the schemes performance prior to the increase in Resides Operating Costs which has worsened the Net Present Value from -£14.4m to -£28.8m currently referred to as the base position.

2.15 The table below sets out the currently approved grant position (October 2022) and now proposed grant position (June 2023).

Table – Summary of grant position for the project						
£m	Affordable Rent			London Affordable Rent		
	Oct 2022	June 2023	Variance	Oct 2022	June 2023	Variance
GLA AHP	0	0	0	11.3	13.5	+2.2
GLA RTB Ring Fence	4.7	9.7	+5	0	0	0
LBBD RTB Receipts	9.1	5	-4.1	0	0	0
HRA (rehousing costs)	0	0	0	3.2	3.2	0
Section 106	0	0	0	0	1.7	+1.7
Total	13.9	14.7	+0.8	14.5	18.5	+4

Notes:

- Right to Buy subsidy is capped at 40% of Total Scheme Costs.
- The TSC of Affordable Rent on Oct 22 was £35m (40%=£14m) and is now £36.9m (40%=14.7m)

2.16 Several scenarios have been explored to ascertain the extent that viability may be improved. These are summarised in the table below, showing the individual and cumulative improvement, with supporting narrative and a rating of likelihood. The most viable option incorporates steps 1 to 4E which provides a positive cumulative cashflow in Year 1

Steps		**NPV Improvement**	**Cumulative NPV (5% DR)**	**Likelihood**	**Cumulative Cashflow (Positive)**
	Base Position		-£28.8m		Year 48
1	Market rent homes changed to affordable rent supported by £36m of rtb receipts	+£1m	-£27.8m	Planning risk low/ LBBD to confirm rtb receipts	Year 50+
2	Add service charge of £33pw on top of the LAR rents charged	+£5.6m	-£22.2m	LBBD to consider – confirmed s/c can be included in Housing Benefit	Year 50+
3	LBBD provides £5.7m capital subsidy to fund the public realm rather than borrowing long term.	+£5.8m	-£16.4m	LBBD to consider	Year 47

	(Potential to look at an asset sale to be ringfenced for this)				
4A	Apply 40% RTB receipts for the 3&4 bed LAR homes to support their viability	+£6m	-£10.4m	LBBD to consider	Year 42
4B	Rental inflation on AR tenure increases from 2% to 2.5%	+12m	+2m	LBBD/Reside to consider	Year 33
4C	Long term interest rate reduced LAR 3.5 to 3% AR 4 to 3.5%	+11.6m	+13.7m	LBBD to consider	Year 23
4D	Reside operating costs reduce to 20% above benchmark rates in 5 years (2028) Assumes current Reside rates until 2028	+£23m	+£37m	Reside to consider	Year 12
4E	Affordable homes let from month 1	+£3m	+£40m	Reside to consider	Year 1

2.17 Below is an explanation of these steps with further information contained within the financial implications at Appendix 1.

- Base position without the following step produces an NPV - £28m

  - Step 1 - 167 Market rent homes switched to Affordable rent so that they can be supported by £36m of RTB receipts improves the NPV by £1m. This is recommended however Members should note that this would substantially deplete any RTB receipts remaining available for future schemes in the pipeline.
  - Step 2 – Service charge is not currently added to LAR rents. It is recommended that this is now added at a cost to tenants of c £33/week. Tenants would be aware of the full cost to them when they accept the lease and it is expected that the additional cost would be be covered by an increased Housing Benefit allowance.
  - Step 3 - LBBD funds £5.7m for the public realm works. No LBBD funding is currently available for this although s.106 funding may become available. It is recommended that an asset be identified and ringfenced for disposal to ensure that LBBD has access to the required capital should alternative funding not be secured.
  - Step 4 A - Apply 40% RTB receipts for the 3&4 bed LAR homes to support their viability. Again, this is recommended however Members should note that this would substantially deplete any RTB receipts remaining available for future schemes in the pipeline.
  - Step 4B - Adopt a rental inflation position on AR tenure of increases from 2% to 2.5%. assumption will be reviewed as the scheme progresses.
  - Step 4C - Reduce Long term interest rates on LAR from 3.5 to 3% and AR 4 to 3.5%
  - Step 4D - Reduce Reside operating costs to 20% above benchmark rates in 5 years (2028). A report has been prepared for LBBD, Be First and Reside on

benchmark rates across the social housing world and this will be reviewed during the life of the build programme. Reside have agreed to work towards this.
- Step 4E - Assume Affordable rent homes are let within one month from handover. Currently occupation is expected to happen over a 12-month period. All other social housing landlords model occupation in month 1 after handover. Reside have agreed to work towards this.

2.18 We have considered a number of other steps which include:

- A reduction in Wates price – no scope to decrease below the £147.9m
- Rental values – Savills have advised that current values remain valid. These will be reviewed during the life of the build programme.

Tenure Cashflow of the Most Viable Scenario – Scenario 1 to 4E

Cashflow Performance Cumulative position	Affordable Rent	LAR	Total
Year 1	£162,168	£256,591	£423,244
Year 10	£1,348,733	£485,239	£1,843,491
Year 20	£10,077,550	£1,518,384	£11,605,453
Year 30	£31,116,946	£4,533,806	£35,660,271
Year 40	£68,140,495	£9,965,619	£78,115,633
Year 50	£124,267,448	£17,503,573	£141,771,022

2.19 Following the steps 1 to 4E route means all of the homes will be affordable. See tenure change table below:

Option	Market Rent	LAR	Affordable rent
Existing	167	90	77
Proposed MR swap	0	90	244

2.20 Below is a summary of the subsidy position of Option 4E.

Subsidy type	Amount – Option 4E
GLA AHP (£150k unit)	£6,000,000
GLA RTB Ring Fence – 77 AR homes	£9,754,813
LBBD - RtB Top Up to 40% total (existing 77 AR)	£4,372,599
LBBD RtB – for the 167 AR homes switched from MR	£35,968,018
LBBD RtB – 3 & 4 bed LAR homes	£11,548,323
HRA Subsidy (Decant)	£3,240,000
Public Realm Subsidy	£5,917,217
s106 Subsidy	£1,761,784
Total Subsidy	£78,562,754

Note: the RTB subsidy is dependent on achieving a certain number of council house sales per annum. The subsidy assumed is at risk if this is not achieved. The income assumption is based on current trends.

3. Options Appraisal

3.1 Officers have looked at a number of alternative options as outlined below but have discounted them. All of the following options would involve writing off costs relating to planning, CIL and design, potential loss of GLA AHG and right to buy ringfence receipts which may or may not be available next time.

3.2 **Option B - Terminate the Contract with Wates and secure the site**

3.2.1 Under this option Wates would continue to complete demolition of the site, removing foundations, terminating all services and clearing the site.

3.2.2 Once Wates hand back the site we would need to secure it and would then be responsible for ongoing security costs. Security costs are estimated to be in the region of £10,000/week based on previous schemes (figures provided by LBBD). Based on Oct 23 stop and Q2 2025 start these costs could be circa £780,000.

3.2.3 Stopping the contract after demolition and site clearance will mean a re-design of the scheme due to the requirement to comply with the new regulations, incurring redesign, planning fees and a new CIL payment, as well as having to account for build cost inflation as set previously in the report.

3.2.4 Current redesign costs have been estimated by our consultants Faithful & Gould to be in the region of £4.9 million made up of Architects: Built environment and Landscaping, planning, ME&P, and Structural engineering fees.

3.2.5 Given the current cost pressures within the construction sector that impacted the scheme, pausing the development has been considered as an option to establish if any delay to scheme delivery could result in a positive impact to the scheme's KPI's.

3.2.6 Pausing of Local Authority and Govt projects could create capacity in the market which could reduce prices, and although we have used estimated inflation figures there is still a high level of volatility and cost uncertainty it is extremely difficult to accurately predict future cost trends, particularly over the next 12-18 months.

3.2.7 Terminating Wates contract would involve writing off:

Cost item	Actual Spend to date (May 23)	Forecast future Liability
Works	£9.2m	£4.8m
Fees inc all on costs	£2.9m	£0.2m
CIL	£0	£1.3m
Sub total	£12.1m	£6.3m
Actual + forecast spend		£18.4m

3.2.8 Under the terms of the contract LBBD can terminate the contract through an instruction as the break value of £142,061,994 (Gross Maximum Price).

3.2.9 A previous option to demolish Anderson House and refurbish the remaining units was rejected on the basis of long-term operation cost risks associated with meeting future environmental and regulatory standards, that option also produced an NPV of -£48.8 million and a payback year of 89.

3.3 **Option C - Terminate Wates Contract and retender the contract attempting to safeguard the current planning and building control position**

3.3.1 Wates have currently projected to be on site until September 2023 to complete the demolition. To maintain the building regs position as mentioned above there needs to be continuous working on the site which we would not be able to achieve.

3.3.2 The Be First contractor framework expired in Q4 2022 and is in the process of being re-tendered. The new contractor framework is unlikely to be available until Q1 2024. Alternative tendering routes available are:

a) An open tender following the OJEU process; or
b) Seeking an alternative framework to use

3.3.3 An estimate of time to retender the scheme provided by our consultants F&G and also our Programme Management Office given the current procurement routes available to us is of at least 6 months.

3.3.4 This option is therefore discounted as we would not achieve the meaningful start to protect the building regulations/planning approval position.

3.4 **Option D - Terminate Wates contract and of dispose a cleared site to a third-party developer**

3.4.1 The land and buildings that go to make up the Gascoigne Estate 3B redevelopment scheme currently sit within the LBBD HRA. There are legal requirements associated with disposing of HRA owned assets, which require consent under Section 32 of the Housing Act 1985.

3.4.2 It would be difficult to sell the site out of the HRA with a marketable planning consent due to the need to re-provide affordable homes on the site.

3.4.3 As mentioned previously one of the drivers for getting into contract was to preserve the Building Regulations position. To be able to maintain the building regulation position we would need to achieve a meaningful start by March 24. Without this in place a new planning consent would be required so delaying any sale.

3.4.4 The land on which the proposed scheme is located previously accommodated council housing and as such there is a requirement to re-provide the lost units. This currently amounts to 50% of the homes i.e. 167 new homes. This would mean that any sale agreement would have to have a stipulation that this floor space is re-provided limiting the developer's ability to negotiate their own level and type of affordable housing; any constraints on a purchaser's ability to deal with the site how they would like will impact the price that could be achieved possibly resulting in a negative land value.

3.4.5 This option will also result in a delay to the delivery of the scheme, whilst the developer gains their own planning consent. Be First and LBBD’s approach to regeneration has been design led, sale to third party developer would mean that Be

First/LBBD would lose control over the design integrity of the scheme with only the planning system to rely on.

3.4.6 Given all of the above it is unlikely that a positive land value would be achieved. In addition, LBBD would suffer substantial abortive costs as mentioned in option B above.

3.5 **Option E - Terminate Wates contract, seek a planning consent starting site in Q2 2025**

3.5.1 In addition to security from the end of demolition to the start on site for a new scheme, pursuing this option does also mean forfeiting of the costs to planning of circa £5m, the Wates s1 contract fees of £5,877,892, s2 costs abortive design works of circa £3m and the CIL floorspace offset of £1.2m.

3.5.2 A new planning consent for the scheme would have to be applied for complying with all new regulations. In addition, our EA has estimated the second staircase will add 1%, sustainability 6-10%, and building Regs changes 5-7%. There would be further additional costs associated with the Building Safety Act.

3.5.3 The grant programmes are always changing and grants rates can be reduced. The increased challenges that this period of high inflation has brought to the sector regarding project viability issues being faced by Councils and Housing Associations, Social Housing Grant will be very sought after as organisations seek to keep their development plans moving. Ongoing conversations with the GLA will take place to maximise the amount of grant going into the scheme.

3.5.4 As well as the delay to the delivery of new homes current estimates from our consultants show that build costs could increase further by 4.9% for Q2 2025 start on site. The build price put forward by F&G includes compounded interest to Q2 2025 plus additional costs for secondary staircases and costs for regulatory changes.

3.5.5 Build cost estimate for this option as provided by our consultants is £170m. This option renders the project even more unviable.

4. Consultation

4.1 The Gascoigne East 3B development proposal itself has been through extensive pre planning and planning consultation.

4.2 The Council's Investment Panel considered and endorsed the proposals at its meeting on 16 August 2023.

5. Commissioning Implications

Implications completed by: Rebecca Ellsmore, Strategic Head of Place and Development

5.1 This phase of the Gascoigne East renewal programme has faced significant viability challenges. However, the report sets out a range of steps that can improve the viability position to a point where the decision to proceed is recommended to Cabinet.

5.2 This decision does have implications for the future pipeline of schemes, in particular through the use of the substantial levels of Right to Buy receipts. However, the importance of this phase of development to the wider Gascoigne Estate renewal programme is recognised and the use of right to buy receipts to support this is again recommended.

5.3 The proposed steps to improve viability also have implications for Reside in terms of reduced operating costs and accelerated lettings. The need for improvements in both these areas is recognised and plans are already in place to pursue this improvement. This will be monitored by the commissioning leads but remains a risk until it is achieved.

5.4 The phase is now proposed to provide 100% affordable housing. Future phases will need to ensure that the wider Estate still accommodates a mixed tenure community.

6. Financial Implications

Implications completed by: David Dickinson, Investment Fund Manager and Jo Moore, Interim Strategic Director (S151 Officer)

6.1 The changes put forward in this report have resulted in GE3b becoming marginally viable, compared to the significantly unviable proposal agreed by Cabinet in October 2022. The key reasons for improved viability are the reduced interest rate, significant increase in Right to Buy receipts, agreeing service charges being charged for LAR properties and tightening cost at handover and for operational spend.

6.2 Potentially rents could improve as a result of the other Gascoigne developments and interest rates could improve which would further benefit the overall viability of the scheme and this will be closely monitored.

6.3 Further details of the financial implications are set out in Appendix 1, which is in the exempt section of the agenda as it contains commercially confidential information (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

7. Legal Implications

Implications completed by: Dr Paul Feild, Principal Standards & Governance Lawyer

7.1 This development has been considered by the Cabinet in April 2021 and again in October 2022 where a change in the building contract to Building Excellence was agreed. Further work has been carried out including the substantial decanting of the occupiers at the time. However since the scheme was envisaged, circumstances have placed even more pressure on the costs of the development principally but not exclusively construction inflation due to costs of, and scarcity of the necessary components to build new homes affecting, logistics, raw materials, energy, professional services and workforce. Furthermore, the regulatory regime regarding issues relating to building safety is in flux with regard to the requirement for second staircases in buildings above a specified height. It is understood that the GLA approval was granted before it determined a local policy of requiring two staircases for buildings above 30 metres. For these reasons this report rightly updates the Cabinet of the changes which will impact on the cost of delivery of the development.

7.2 At this stage it must be flagged up that while the development scheme is compliant, the signalled potential change in the regulatory framework for building and environment is significant regarding requirement of double staircases. The GLA is requiring new buildings above 30 metres in height to have two staircases to as one of their requirements for stage 2 approval. However, a picture is emerging that the Secretary of State may set a lower height to 18 metres for new-builds. Clearly the Council will need to consider whether it will still wish to proceed with current single staircase design. Delay in proceeding with the development will mean that these changes will impact significantly on the project with substantial extra costs due to changes in methods and construction and need to get compliance with the revised planning regime.

7.3 Originally the contract to the contractor was awarded off one of the Be First Frameworks. It has now been changed to a JCT - Constructing Excellence form of contract. The revised arrangement does enable the council to reconsider its options due to the rise in construction costs.

8. Other Implications

8.1 Risk Management

8.1.1 In terms of the main risks, these are summarised below:

- Below ground unknowns – risk retained by ourselves retained as just antiquities (this is a standard JCT clause) – surveys do not show any issues so risk relatively low.
- Statutory Services/other requirements – this is a contractor risk item.
- District heating derogations – this is a contractor risk item.
- Soft/hard landscaping – agreed saving to tender but subject to planning. Agreed extra over cap to cover any planning risk of £500k which is covered in our contingency. The instruction is to design a scheme to the agreed budget and this element will be monitored on an open book basis. Our exposure is capped to £500k.
- Dry lining – agreed a saving to the tendered sum of £1m as we believe this can be achieved with hoped for tender softening in 2024. This is covered in our contingency but will be monitored on an open book basis if tender saving does not materialize. Our exposure is capped at the £1m.
- Supply chain insolvency – for additional saving we agreed to cover £500k for this item. This is incorporated in the contingency but will be monitored on an open book basis should any events occur. Our exposure is capped at the £500k.
- Reinforcement quantities and BSA are contractor issues.
- Force majeure are part and parcel of any JCT contract.
- Future employer led changes – we will not be making any changes without making a saving.

- Inflation is capped within the £148m and anything above is a contractor risk.

8.1.2 As mentioned above the risk work carried out suggests that a £6m project contingency additional to the contract value is appropriate, which represents a 4% contingency. The three main risks are incorporated in the table below.

Risk Item	Project contingency sum
	£6m
Risk Item 1 - Soft/hard landscaping	Capped at £500k
Risk Item 2 - Dry lining	Capped at £1m
Risk Item 3 – supply chain insolvency	Capped at £500k
Balance of project contingency	£4m

- £2m of this has come from a quantified risk register and £4m is general project contingency. Those items are currently have a green RAG rating.
- Utilisation of the full contingency allowance has been assumed in the viability assessment.
- Approval is requested for the contract value only but the Council should note that holding up to £6m in contingency is a prudent approach.
- The approach will be to minimise any spend of this contingency.
- Should any contingency draw-down be required the usual CRF process will be followed.
  (Note: the £6m contingency sits within the total scheme costs of £174,657,138).

8.2 **Contractual Issues** – a Deed of Variation will be required to adjust the contract sum and dates.

8.3 **Property / Asset Issues** – all properties will be transferred to Reside to manage.

Public Background Papers Used in the Preparation of the Report:
"Gascoigne East Phase 3B Development" report to Cabinet, 18 October 2022 (Minute 43) (http://modgovapp.barking-dagenham.gov.uk/ieListDocuments.aspx?CId=180&MId=12607&Ver=4)

List of appendices:
- **Appendix 1:** Additional Financial Information (exempt document)