

**Status Report – April 2013**  
**For Royal Borough Of Kensington**  
**& Chelsea TMO.**

22 April 2013 (Updated 18 June 2013)



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## Approval Sheet and Foreword





Our ref: 11833

### Status Report – April 2013

For

Royal Borough Of Kensington & Chelsea, TMO

Grenfell Tower Regeneration Project

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### FOREWORD

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Our ref: 11833

### Status Report – April 2013

For

Royal Borough Of Kensington & Chelsea, TMO

Grenfell Tower Regeneration Project

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## EXECUTIVE SUMMARY

This report relates to the Grenfell Tower Regeneration Project (GTRP) for The Royal Borough Of Kensington & Chelsea, Tenant Management Organisation (TMO).

It has been generated, because progression of the scheme has been extremely slow since before the beginning of 2013 and there are obvious indications that the scheme as it stands remains outside the parameters set for the project relating to time and cost, which continues to hamper progress. Consequently, the TMO have requested Appleyards highlight the current status of the project and make recommendations on how to progress the scheme for the refurbishment of Grenfell Tower

Whilst it is not the intention to review the historical factors which have given rise to the present situation, in detail in this report, they are addressed in a little more detail in section 2.0; Introduction & Status of the Project at April 2013.

In summary, there are a number of contributory factors that have lead to the present situation, including:

- The development of the client brief went through a number of iterations over time, expanding to reflect the desired objectives;
- A perceived poor commitment from Leadbitter to demonstrate a full commitment to this project. The indications are that this project was not properly resourced due to the parallel demand of the Kensington Academy and Leisure Centre project (KALC);
- Absence of earlier intervention;
- Absence of full change control process applied to the developing design brief; and
- Slow reaction of the proposed contractor to address and align cost plans.

Since the beginning of 2013, there have been progressive attempts to align the costs of the PQS, Appleyards and the preferred contractor, Leadbitter. To date, insufficient progress has been made to align the cost plans sufficiently to determine an agreed price for the work or bring the cost of the project, as currently specified, within the advised construction budget.

Recent meetings with the contractor are indicating better alignment of costs between the Contractor and the PQS, however there remains a gap between the two parties, whilst the total construction estimate remains significantly higher than the budget would allow for, which reflects the views regarding value for money

The following matters represent the principle issues facing the project at this time:

- Based on the experience of the negotiations that have taken place on KALC and the extensive meetings held with Leadbitter in this project, no positive indication that the existing scheme can be completed for the approved budget.

- Leadbitter are yet to prove they can provide value for money, based on benchmarking of costs with other equivalent schemes that have been procured through a competitive process.
- The scheme is already running significantly behind programme.
- Long running disagreement between cost consultant and contractor has proved slow to overcome and even now costs are not fully aligned.
- Based on the current discussion with Leadbitter, there is no evidence that the overall cost of the scheme will be able to be brought within budget parameters, without significant savings being made.
- Given the apparent inability to gain agreement on costs, or cost certainty within sensible parameters it has been suggested that one option might be to replace the preferred contractor, Leadbitter, utilising another existing framework to access other suppliers or to go to the open market to obtain fully competitive tenders.
- Consideration of replacing the existing agreement with the contractor adds risk to the project.
- Replacing the contractor would inevitably add cost and time to the project.
- The legal parameters of replacing the contractor are not fully understood and would require investigation.
- The client has a desire to review the scope of the work to explore opportunities to potentially accommodate a 'Decent Homes' provision, currently excluded from the present scope of work.
- Value Engineering (VE) options to reduce scheme costs, if applied may only make the scheme affordable and may not liberate sufficient budget to make the adoption of the 'Decent Homes Works viable.
- Changing the scope of the project will have a fundamental impact on the design appearance of the final scheme and this will inevitably affect arrangements for securing, or being able to secure planning consent.
- Payment of design team fees are linked with the on-going appointment of a Principal Contractor and their novation across to them. As Leadbitter has not received formal confirmation of their appointment and the design team's fees for works since Autumn 2012 remain unpaid this is affecting design team's contribution.

Some of the foregoing matters have only recently come to light or are able to be quantified and there remains work to be done to determine the impact associated with each issue such that decisions can be taken.

However, the circumstances of the project, as presently identified, are such that the only logical approach to propose is that the project is stopped in its present guise, and a root and branch review is undertaken to better understand the contingent factors and to fundamentally review and revise the project brief and reflect on whether the current procurement route is really giving value for money before any further resource is committed in an attempt to progress a project which at face value is incapable of delivery in its present form.

Recommendation:

- Cease design activity on anything other than re-configuring the scope of the project / re-setting the project parameters;
- Conduct options appraisal to determine affordable scope of work which meets the clients updated requirements;
- Re-programme the project in light of revised design and project parameters;
- Revise planning submission;
- Review option to replace the contractor and assess how this could impact on cost & time to the project;
- Impose formal and rigorous change management controls;
- Obtain formal approval to the recommended proposals to proceed;
- Utilise additional time to gain access to site, survey and validate systems; and
- Progress completion of professional appointments with all speed.

Accordingly it is Appleyards view that, given the current project parameters, the overall scheme will fail, with all that entails relating to late delivery, exceeding budgets and failing to deliver quality unless fundamental changes to the scheme are considered and imposed.

A meeting is to be held with Appleyards on Friday 26<sup>th</sup> April at 10-00am, at the Hub, Westbourne Park, to determine the next steps to re-define the project.



## 1.0 Introduction and Status of Project at April 2013

This report is intended to update the project team on the status of the Grenfell Tower Regeneration Project (GTRP) as at April 2013.

The report gives limited background to the history of the project prior to today's date, but seeks to clarify the present position, present options for progression of the project and make recommendations for next steps.

To date, a construction budget has been identified for the refurbishment of the GTRP of £8.5 million.

The project can be regarded as a stand-alone project that is derived from the Kensington Academy and Leisure Centre project (KALC) and has sought to take advantage of the existing procurement arrangements to engage and appoint both the professional team and under the IESE framework, the building contractor.

The Principal Contractor, appointed for the delivery of the KALC project is Leadbitter Group and consequently, it is Leadbitter who have been associated with the development of the Grenfell Tower scheme through the design stage with the intention of delivering the construction phase on confirmation of a formal appointment.

Whilst a Pre-Construction Agreement has been drawn up, which sets out the basis of a contract between the TMO and Leadbitter, to date it has not been executed. Therefore, there remains some ambiguity over the strength of covenant of Leadbitter's appointment and contractual position with the TMO.

In addition to the above, there is further the further matter of fees payable to the consultant design team, which needs resolution. Initial design activity has been conducted by Studio E (architect) Max Fordham (MEP) Curtins and others. The original intention agreed with all parties was to novate the professional team appointments to Leadbitter following successful negotiations and pending approval from the TMO to enter into a contract for the delivery of the construction works, on the basis of a Design & Build contract. As the works have not progressed, novation arrangements remain at large and we understand that significant fee amounts remain due to members of the design team and in the interests of facilitating ongoing contribution by the affected parties, early resolution of the outstanding fee situation is desirable.

The project was initiated in early 2012 and progressed to RIBA stage D design in October of that year. The intention was then to align the cost plan with that of the contractor's, obtain planning permission and for Leadbitter to tender the works in trade packages to arrive at a firm price prior to making a start on site in February 2013.

However as at today's date the project has effectively stalled, primarily due to the inability to align the cost plans of the contractor and the PQS, the difference being in excess of £1.2 million.

Further, there is circumstantial evidence to suggest the following:

- Early cost plans indicated affordability of the project;
- The design developed over time did not reference back to the budget; and
- Increase in scope as the design developed and to allow for perceived requirements from local authority planners put further pressure on the budget..

In addition to the foregoing, there have been several changes of personnel involved with the project in the contractor's team which may have contributed to the 'issues' being faced by the project at today's date.

This report does not seek to determine errors or omissions or otherwise seek to find fault for any of the events or examine causes leading to the current position, rather to recognise and clarify present matters and propose next steps, to promote onward progression of the project.

Continuing delay to the project will certainly impact time and cost aspects of the project and by association with the money available to spend on construction the content or quality of the project output.

It is Appleyards' contention that the existing construction budget of £8.5million is insufficient to progress the scheme for the GTRP in accordance with the design as currently tabled, following the current procurement route. This is substantiated in the following sections of this report, below.

The shortfall in available funding to the scheme as currently drawn and proposed may be exacerbated by some specification items which can be perceived as high cost or high specification and an obvious first step in attaining affordability of the scheme would be to review the inclusion of such items and perhaps consider re-specifying with a more cost effective product(s).

Further, there is a declared interest from the TMO to engineer savings or seek additional funding to allow the scope of the existing scheme to allow for works within the individual flats in the tower to accord with a 'Decent Homes' initiative.

Any changes in scope occasioned by any Value Engineering to; either meet the funding available, or to re-allocate available funding to apply to a Decent Homes initiative is likely to have a consequential effect on the design of the building envelope. In turn, this will affect the existing planning consent being sought and it would need to be withdrawn and a revised application submitted.

Accommodating a revised planning submission at this time will inevitably add duration to the overall programme and is likely to impact cost in terms of additional design fees to address design revisions and the production of supporting information.

That there is insufficient budget allowance to cover the existing scheme, excluding any allowance for Decent Homes work, indicates that not only would a saving need to be found on both the PQS and Contractors cost plan but also an exercise (value engineering) be undertaken to reduce the scope of the project or seek additional funds to enable the desired works to be achieved, in addition to the principle works to the flats.

The current position of the cost plans is such that Appleyards figures are already in excess of the £8.5 M budget and the contractor, Leadbitter's costs are further in excess of that.

Detail of the sums involved, the implications arising from this disparity and our recommendations are set out more fully in the cost section of this report, below.



## 2.0 Client Matters

From the early stages of the project circumstantial evidence indicates that the development of the design for the project has not accorded with best practice. It has been suggested that the basis of the design was developed from a series of client meetings without the design team defining a comprehensive brief addressing project requirements, deliverables or the budget for which the project was to be delivered.

Any investigation or substantiation of such comment is not the intended purpose of this report. Should such a forensic examination be required, then it is suggested it is conducted independently to this report.

During the early stages of the project, the design progressed through a number of iterations with a cost plan running concurrently. Early Cost Plans recorded construction costs of £6.5M and this figure grew progressively as a result of enhancements in the desired scope of work informed by the TMO. As a result the Construction Budget was confirmed at a figure of £8.5M.

It should be noted that the Project Sponsor changed in January 2013 and subsequently the TMO is seeking to review and affirm that the proposed regeneration works maximises the value of the building for the immediate future.

It is understood that the TMO are concerned that the current scheme seeks to fund £8.5 M of work to the external envelope of the building and services infrastructure without producing a tangible uplift in the living conditions of the residents of the tower block. However, the primary funding which is coming from RBKC, is specifically directed to these works and not improvements within individual flats.

Accordingly, the design and Contractor team have been requested to consider a Value Engineering exercise to identify elements within the scheme which could be reduced in cost or specification to realise savings. Such savings could be reallocated to alternative works to upgrade kitchens and bathrooms within the flats in line with the 'Decent Homes' scheme.

A preliminary VE exercise has identified up to £2.019M of potential savings (Leadbitter figures) Please see item (a) to (g) for breakdown in Section 4.0, below. However, some of the proposed VE suggestions go against the core basis of funding from RBKC.

It should be recognised that to achieve such savings there would need to be a fundamental reduction in the scope / specification of the scheme, which would require commensurate changes in the associated planning submission.

The full impact of pursuing these potential changes would therefore need further, careful assessment.

Given the existing estimates of cost exceed the available budget by £864k (based on Appleyards latest cost estimate) or £1.548M (based on Leadbitter's latest cost submission) it should be recognised that if the identified savings were applied to the existing scheme it may only have the effect of reducing the scope of the existing scheme. It may not go far enough to realise sufficient savings to fund works of a Decent Homes nature.

Given that a simple estimate of expenditure per flat to undertake works to kitchens & bathrooms to bring them up to a Decent Homes standard might amount to approximately £10,000 per flat then to apply such works across the 120 flats at Grenfell Tower would require an expenditure on construction in the order of £1.2M.

Such expenditure on Decent Homes provision would therefore have an effect on the overall budget as follows:

Total Construction Budget	£8.5M
Less Decent Homes Provision	£1.2M
Total budget available for works other than Decent Homes	£7.3M

It might be expected that such differential might be further eroded by the requirement for redesign and associated costs in connection with revising the attendant planning submission and any consequential delay to the programme. Consequently, any instruction to incorporate such a change to the scope of the project would require further assessment by the PQS.

### **3.0 Scope of Work/ Design**

#### **3.1 Summary of Existing Scope:**

- Aluminium cladding to columns and spandrels.
- New aluminium windows. Pivoted sash for cleaning, hinged purge panel with louver.
- Reconfiguration to podium to create 3no. resi @ mezz and 4o. 4 bed units at Walkway +1, Boxing Club at Walkway and Nursery at ground floor level.
- New entrance foyer, concierge, public stair lift and bridge connection to the Walkway deck.
- Conversion of 5no. garages to offices, possibly for use by the Estate's Management team. New glazed facades and cladding.
- New landscaping around the tower, integrating with the public realm works under KALC and extending up to the converted garages. New external lighting.
- New ceiling and lighting to the undercroft.
- New heating system to the tower, decommissioning and removal of existing boiler, heating pipes, hot water tanks and radiators in all the units.
- New cold water tanks in the roof.
- New lighting and pipe enclosures to the lift lobbies.

#### **3.2 VE options to reduce scope to fit construction budget and incorporate decent homes standard:**

- Change of primary heat source heat pump to Gas Boiler in Basement and re-use existing riser.
- Reduce specification of light fittings.
- Minor change of natural gas system installation.
- Change of hot and cold water pipework system.
- Change from Aluminium frame windows to UPVC windows.
- Omit works to existing garages, bin store and omit Trespa cladding to existing undercroft.
- Change from Aluminium Cladding and Schuco curtain wall and windows to Insulated Render and standard Aluminium frame window.

#### **3.3 The implications of taking the VE route:**

- Savings made, when compared with overall budget may not liberate sufficient funding for Decent Homes works.
- Radical VE of the scheme will require a revised planning application.
- Pursuing the VE options will incur additional design fees.
- Stopping scheme at the present time to undertake full VE exercise and re-programme will extend completion of the scheme to mid to late 2015.
- It may be considered that the expected delay associated with accommodating the VE changes may add cost to the overall scheme.



## 4.0 Costs

### 4.1 Costs History

The total construction cost was estimated at £8.145M as per Stage D cost plan issued in December 2012. All relevant Stage D drawings and reports have been issued to Leadbitter in January 2013 for them to review and price accordingly. Leadbitter submitted an estimated construction cost of £12.148M. Various meetings and discussions carried out between Appleyards and Leadbitter to identify and reduce the differences in cost and to establish a baseline from which a value engineering exercise could start.

### 4.2 Current position

The current estimated construction cost by Appleyards is revised to **£9.364M** (including £765k as Client's contingency), an increase of £949k due to the following reasons: -

- The actual cost for new gas absorption heat pumps and top up boiler has been demonstrated to be £240k more than allowed for in Stage D cost plan as previously advised by Max Fordham;
- New lighting to all common areas, cost increased by £73k. Stage D cost plan only allowed for relocation of existing lighting as per original brief;
- New cold water system to all flats (not in original brief), cost increased by £370k;
- New smoke extract system added (instead of upgrading the system as allowed in Stage D cost plan), cost increased by £98k;
- Preliminaries increased accordingly- increased by £124k; and
- Associated BWIC increased as total M&E cost increased, increased by £44k.

Date	Chronological lists of event	Estimated Construction Cost	Decreased in Construction Cost
14 Feb 2013	Leadbitter's first submission	£12.148M	-
25 Feb 2013	Leadbitter's second submission	£11.735M	£413k
27 March 2013	Leadbitter's third submission	£10.956M	£779k
16 April 2013	Leadbitter's forth submission	£10.667M	£289k
17 April 2013	Leadbitter's fifth submission	£10.270M	£397k
18 April 2013	Leadbitter's sixth submission	<b>£10.048M</b>	£222k
		Total reduction in cost since 1 <sup>st</sup> Submission:	<b>£2.1M</b>

Leadbitter estimated construction cost has reduced by £2.1M since their first submission. The original level of information Appleyards received from Leadbitter was poor as their pricing is based on a lump sum.

Leadbitter have since provided further cost breakdowns on request which has enabled Appleyards to carry out more meaningful comparison and analysis.

Until recently, responses to requests for additional breakdowns and cost information from Leadbitter have been slow, although this has improved in recent weeks.

The difference between Appleyards latest cost plan and Leadbitter currently stands at **£684k**. The overall comparison is summarised as below: -

- Mechanical and Electrical Services, difference of £10k.
- External façade and roof, difference of £378k. This is mainly as Leadbitter has priced for Tilt and Turn windows instead of Central Pivot windows as allowed in our Cost Plan. Leadbitter has advised that the central Pivot window does not comply with part L and the costs are only marginally lower than Tilt and Turn window. Further discussion is required to resolve this matter and cost saving is still being investigated by Leadbitter.
- General fit-out works, difference of £207k. There are still some elements where Leadbitter needs to submit their detailed cost breakdown as these elements are priced on a lump sum basis.
- Preliminaries cost, difference of £89k. This cost will be adjusted accordingly based on the total estimated construction cost.

Please see appendix A General Comparisons for further details.

At recent meetings following a more detailed review of the key differences in cost plan values, adjustments have been made on both sides to reflect the levels of historical data

It could be expected that further costs savings may be able to be made given further dialogue with Leadbitter, but as most of the principle 'big-ticket' items have been addressed as a priority, it should be expected that any such further savings will generally now be incremental rather than significant.

#### **4.3 Can value for money be proved utilising Leadbitter costs? (bearing in mind the option costs to dispense with Leadbitter's services)**

A negotiated tender will historically result in a higher cost than a competitively tendered one. However, because of the fact that Leadbitter had already gone through a procurement process based on the IESE framework, it was felt that there would be distinct advantages in terms of time and costs of going through a procurement process. In addition, the principles of the IESE process and the KPIs that underpin the framework, are promoted as giving good value for money.



Appleyards would require further discussion with Leadbitter in order to align Leadbitter's costs and with the cost plan. Initially, Leadbitter's demonstrated a willingness to adjust their rates based on Appleyards comments and that they were open to negotiation (their costs have reduced by £2.1M since their first cost submission). However, closing the gap to an acceptable level is proving to be a much harder exercise and given the protracted financial and contract close out process that has been experienced on the KALC project, expectations of reaching a satisfactory conclusion are not high.

Appleyards believe that Leadbitter's overall construction cost contains a relative level of risk in their pricing, which is not being realised in the negotiations and Appleyards believe is contributing to the discrepancy issues.

Similarly, there are still items priced on a lump sum basis by Leadbitter. As the level of information is still at Stage D, there are bound to be uncertainties in costs for various elements until such time as the actual specification and design for this project is finalised (Stage E), but as with risk above there is an apparent reluctance to acknowledge that the lump sum prices are ambitious and do not recognise the benefits that will be gained when they go out to competitive tender for work packages.

As already mentioned, similar exercises have resulted in extensive negotiations have occurred on both the Academy and Leisure Centre projects and whilst they have resulted in financial close being achieved, it has been a long and protracted process, which has resulted in a lot of compromises on the part of RBKC.

#### **4.4 Value Engineering (VE)**

Appleyards current estimated construction cost is £9.364M, which is £864k over the budget of £8.5M. We do not think we can get within budget on the existing specification. Accordingly, a Value Engineering exercise will be required simply to make the current scheme affordable.

#### **4.5 Possible VE cost reductions (budget figures):**

- (a) Change of primary heat source heat pump to Gas Boiler in Basement and re-use existing riser, saving of £366k.
- (b) Change specification of light fittings, saving of £156k.
- (c) Minor change of natural gas system, saving of £40k.
- (d) Change of hot and cold water pipework system, saving of £50k.
- (e) Change from Aluminium frame windows to UPVC windows, saving of £285k.
- (f) Omit works to existing garages, bin store and omit Trespa cladding to existing undercroft, saving of £512k.
- (g) Change from Aluminium Cladding and Schuco curtain wall and windows to Insulated Render and standard Aluminium frame window, saving of £610k.



Total saving identified: **£2,019M** (items A-G inclusive)

Current Appleyards construction estimate = £ 9.364M

Less VE items (£2.019M) = £7.345M

Current Budget = £8.5M

Less VE adjusted Scheme = 7.345

Gives £1.155 M for Decent Homes

Therefore it could be speculated that with some further reduction in Leadbitter costs allied to an open book approach, an affordable scheme which includes decent homes provision could be progressed. However, this will incur additional costs in fees for re-design, additional planning costs and delay.

Details of such a scheme, and commentary on the extent of additional costs and delays associated would require separate assessment.

## 5.0 Procurement – Principle Contractor

The procurement of the Principal Contractor for the Grenfell Tower Regeneration Project (GTRP) was included in the KALC invitation to tender.

GTRP was originally envisaged would be carried out in parallel with KALC, the procedure followed has been to utilise the IESE framework to perpetuate and take advantage of the appointment of Leadbitter to deliver the GTRP.

Given the present issues surrounding the project and acknowledging that the cause of at least some of the delays and inability to reconcile the cost plans between Appleyards as PQS and Leadbitter, have been suggested to due to a lack of responsiveness and pro-activeness on Leadbitter's part, it has been suggested that the TMO might be best suited to procure an alternative Principal Contractor for the project.

It is currently considered that turning to an alternative framework or procurement on the open market through the OJEU process would give the TMO access to other contractors, capable of delivering better value to the GTRP project.

To date the LHC framework has been identified as the most practical framework that would be available to the TMO to utilise.

Whilst the suggested course of action is to draw a line under the negotiations with Leadbitter, Appleyards would suggest there are still issues that will need to be considered:

1. PQS project costs maintain that the overall cost of the scheme is in excess of the budget, which would indicate more fundamental action is required rather than to just change the contractor.
2. Usurping Leadbitter at this stage throws up questions about the TMO's ability to do this, from a legal point of view. Appleyards are unable to comment on the legalities of this and recommend separate legal advice is sought if this were to remain an option.
3. Replacing the Principal contractor at this stage will incur additional time and expense without the guarantee that the TMO would be any better served by the replacement. Although, by going through a single stage competitive approach, there is every indication based on tender returns for other projects that it should provide a commercially better outcome.

Accordingly, and given the recommendations elsewhere in this report, Appleyards recommend negotiations with Leadbitter are ceased and alternative contractor procured via one of the suggested routes above.

## 6.0 Programme

### 6.1 Historical and Existing Programme Summary

We understand that the objective of the project has always been to conduct the refurbishment works in line with the construction programme of KALC, giving a completion date of no later than September 2014.

Stage C sign-off was achieved by way of executive board presentation by the project sponsor on the 15<sup>th</sup> November 2012 and Stage D generally proceeded according to programme, with the original planned date for Stage D submission slipping from the end of October 2012 to the middle of December 2012.

We understand from the Contract Award Board Report dated 08/01/13, as drafted by Mark Anderson that a recommendation was made to enter contract with Leadbitter on the basis of the Stage D costs and specification.

Since this point the project has effectively stalled, primarily as Appleyards and Leadbitter costs have not been able to be aligned.

Further to protracted correspondence and a sustained period of Leadbitter's unresponsive attitude to the project the costs are still not aligned and therefore Contract award (and the 80% cost certainty required) will be subject to further delay.

Given the delays experienced to date in aligning the Appleyards and Leadbitter cost plans and the overall opinion of the Cost Management Team that the existing construction budget of £8.5M is unlikely to be sufficient to fund the scheme as currently proposed, we believe the desired completion date of September 2014 can no longer be met.

The key project dates as at Stage D were are follows:

	Start	Finish
RIBA C	July 2012	October 2012
Procurement of Contractor (pre-construction phase)	Dec 2012	Jan 2013
RIBA D	October 2012	December 2013
Planning application	August 2012	January 2013
Allowance for possible Judicial Review	January 2013	March 2013
Design Team Novation	October 2012	December 2012
RIBA E/F1	December 2012	January 2013



	Start	Finish
Pre Contract award / Enabling works	October 2012	January 2013
Grenfell Construction Period	February 2013	May 2014
External Works	February 2014	May 2014

## 6.2 Re-Procurement Impact

Should the TMO consider re-procuring the construction works from another contractor, utilising an alternative framework or following the OJEU process, as noted in section 5.0 above, then the effects on the programme will be as detailed in Appleyards Near Term Action programme 001 Rec C, issued 13 June 2013, which shows both alternatives

The programme does allow for a period of re-design to bring it in line with the budget and a further period of planning amendments however these are notional allowances only, and would not reflect the more comprehensive re-design / value engineering exercise which may necessary before the scheme can progress within budget. The overall re-design programme will have to be agreed with the design team, prior to implementation

Until the scope of works is finalised (giving consideration to overall budget, value engineering, adopting a Decent Homes provision and associated allowances for design, approval and planning) we are unable to confirm programme dates, however a preliminary assessment submitted by Leadbitter has indicated that if a comprehensive re-design is committed to with attendant revision of the planning application a completion date in the late summer of 2015 could be expected.

Overall the programme situation for the project requires further, detailed assessment based upon a clearly defined scope of works.

## 7.0 Planning Submission

Given the foregoing sections and the inevitable likelihood that the scheme will need to change fundamentally to achieve affordability; IBI Taylor Young's (IBI) position is that the chances are that the revised application will be too different from that which is currently on the table to be able to be progressed as a revision to the existing planning application. Therefore, the project would need to be withdrawn and a fresh application resubmitted. This will go through the same process of formal consultation (3 weeks) and the project would need to serve notice on the occupiers of the tower, as previously.

This has two immediate financial implications – The TMO would need to pay a new fee to the Local Planning authority (LPA). This would be similar to the first fee paid and the TMO should know this amount. The TMO would also incur additional professional fees as clearly this is well beyond the original scope. The various supporting documentation will need revising to reflect the changes made to the proposed scheme.

The application would then go through the usual procedures – it would be considered as an 8 week application in normal circumstances but IBI would expect to be asked to sign a PPA which will allow an extension. However, with careful joint working with the LPA at this early design stage, built upon the work that IBI have already done in this area, this should help reduce the timescale.

As long as the AAPs comments are considered in any re-design IBI would not consider it necessary to go back but this will be the LPAs decision.

IBI's view on potential areas for re-design:

- Cladding – a material that does not look manufactured – i.e. with a natural 'grain' and colour that it not too bold! IBI have concerns over permeability through the area which has been discussed before so losing any bridge may raise concerns – a movement plan might help explain / overcome this.
- Need to ensure that the top of the tower is treated in an appropriate manner – The LPA like the 'crown' but there may be other solutions that highlight the top in a less expensive manner (lighting? Using the portholes somehow?).
- The bottom of the tower IBI believe there is particular merit in the external appearance of the proposals and the potential regenerative impact on this part of the estate and have suggested it would be a mistake to lose this key principle of the design.
- The change in internal layout from the current proposal is likely to meet with objection from the LPA but the team are going to have to explain this and support any revised proposals. IBI think the LPA would have a hard job refusing the application on this matter (another reason that IBI think a withdrawal and new submission might be to the projects overall advantage.

## 8.0 Professional Fees

- Fees to date.
- Arrangements for payment.
- Additional fees to account for re-design.

### 8.1 Fees to Date

The procurement method of the design team adopted by KCTMO has been influenced by the KALC project insofar as the same consultants were employed for the various roles. The enforced cap of £174,000 for the design team was adopted as it was believed that procurement of services over and above this amount would mean the project having to be tendered via an OJEU process.

As a result, the intent was for all consultant appointments were under one 'umbrella' appointment via Studio E and it was agreed that the £174,000 would be covered by KCTMO until the end of RIBA Stage D. Following this, it was envisaged that early novation of the design team to Leadbitter at the start of RIBA Stage E would take place – and it was agreed any further fees (including any deferred amounts through negotiation to bring Stage D under the OJEU cap would be met by Leadbitter once the novation had been completed.

Design fees paid to date by TMO (until stage D), and to pay until completion (by Leadbitter) is summarised as follows:

Consultant	Full Fee RIBA A-K	Fee paid to date RIBA A-D	Deferred Amounts	Remaining to be paid by Contractor RIBA E-K
Studio E LLP <i>Architect</i>	£403,750	£95,000	£46,313	£308,750
Max Fordham <i>M&amp;E, Acoustic</i>	£208,250	£40,500	£21,975	£167,750
Curtins <i>Structural Engineer</i>	£85,000	£52,001	£0	£32,999
Churchman <i>Landscaping</i>	£9,000	£4,500	£4,500	£0 (Churchman no longer employed)
Matthew Wigans <i>Landscaping</i>	£9,850	n/a	n/a	£9,850
Appleyards <i>CDMC, EA, QS</i>	£140,947	£19,820	n/a	n/a (All fees to be paid by KCTMO)

The Contractor and Consultants must agree their own deliverables and payment terms to cover over RIBA Stages E – K.



## 8.2 Cost to re-design

Costs associated with re-designing the scheme will need to be assessed once the quantity and extent of the proposed scheme changes have been determined.

As has now been confirmed, the consultant appointments were made on an individual basis, which means that the cap of design fees no longer relevant relative to the above fees. However, any further requirement to undertake design will need consideration if they show signs of exceeding the threshold and how these can be procured and it may be that the original intent to novate the design team to the Contractor to capture their fees within the Contract Award is a pragmatic solution to the issue.

## 9.0 Risk

Pending agreement on a revised course of action for the project, the many possible permutations of a finalised and approved project plan will determine the risks to be identified and managed to ensure the successful delivery of the project.

Such risks can only be identified fully once an approved plan is in place, however the following are some identified risks to inform any decision to continue with the current scheme or revise the scope to realise a project capable of delivery:

1. Proceeding with the project as it currently stands is highly unlikely to meet the advised budget constraints
2. Proceeding with the project as it currently stands is highly unlikely to meet the advised programme constraints
3. At present members of the design team have outstanding fees at large – failure to address this puts the project further at risk with regard to costs and delay.
4. Re-procuring the contractor has several attendant risks:
  - Legal situation – what recourse do Leadbitter have
  - Re-procurement may add further delay to the project
  - No guarantee that the replacement contractor will be cheaper / provide better value
  - Additional effort will incur design & management cost (fees)
  - Delaying procuring the contractor may adversely affect the design team with regard to payment of their fee if the only vehicle to settle such fees is to novate their appointment to the contractor.
5. Seeking to adopt Decent Homes Provision will require significant VE which, in turn will require design changes, attendant planning alteration, re-design, cost and programme delay
6. A value engineered solution may not be avoidable to make the scheme affordable and consequently, re-design costs and planning alterations with attendant time implications may already be inevitable.

## 10.0 Conclusion & Recommendation

From the foregoing, it can be seen there are very many contingent factors on the scheme as it presently stands.

The project is currently over budget with little expectation that if left to iterative reviews with the contractor giving diminishing returns, that costs will be aligned or reduced sufficiently to make the scheme affordable.

The TMO has advised it has desires to change the overall scheme to accommodate a change in brief and the proposed VE options to afford these proposed changes may be consumed simply to bring the existing scheme within the realms of affordability.

Furthermore any design changes consequent to a VE exercise may fundamentally affect arrangements to obtain planning consent, exacerbating time, cost and content considerations.

Beyond this, there have been suggestions made to replace the existing contractor with an alternative, although this procedure itself would incur a number of risks without guaranteeing a positive outcome.

Lastly, members of the design team have not received fee payments since September 2012 and the statutory limitations regarding payment under OJEU make this difficult to rectify.

Accordingly, it is Appleyards opinion that unless the project, in its current guise, is stopped and a fundamental review embarked upon to re-define the scope, programme and cost, it will fail.

Continuing faithfully with the existing plan will only exacerbate matters, and whilst it could be expected that costs might be chipped away at and reduced, it is almost certain that further negotiations between Appleyards and Leadbitter will not realise savings of the order of magnitude required to make the scheme affordable.

Accordingly it is our recommendation:

1. To stop the scheme in its existing guise immediately, pending a design team review.
2. Revise the scope of the project, including the Decent Homes requirements with the £8.5m budget in mind & issue formally;
3. Revise the project programme
4. Conduct a risk management workshop to formally raise the contingent risks to the project and bring them under management.
5. Cease discussions with Leadbitter and consider one of the two alternative procurement routes identified, to engage a new contractor.
6. Account for any additional fees accordingly;
7. Revise planning application;



8. Sign off design;
9. Impose formal change control; and
10. Use additional time to gain access to site, survey and validate systems.

## Addendum

In the intervening period between issue of the original draft of this report and following a meeting the TMO held with Laura Johnson of Royal Borough of Kensington & Chelsea in week commencing 13<sup>th</sup> May 2013, the TMO have clarified their position relating to a number of contributory factors to the scheme:

- Value for Money is to be regarded as the key driver for the project;
- Whilst the inclusion of a Decent Homes provision (works to kitchens & bathrooms) was to be considered this work is no longer critical as it could be accommodated under a separate project at a later date;
- RBKC/ TMO wish to retain works to the boxing club and the nursery as originally briefed;
- RBKC/ TMO support the omission of some of the works to commercial space to the garages and 'finger blocks';
- RBKC/ TMO remain to be convinced that the existing arrangements with Leadbitter can produce value for money and believe entering in to a new, competitive procurement process will give best value to the scheme. This process is likely to entail an OJEU procurement exercise; and
- Appleyards to review possibility of utilising alternate framework procurement.

Notwithstanding the foregoing amendments to the project brief, the key elements of our recommendation remain in force, whilst others may require to be adjusted to address the revised circumstances. The summary of recommendations from the original report is included below, for reference:

- Cease design activity on anything other than re-configuring the scope of the project/ re-setting the project parameters
- Conduct options appraisal to determine affordable scope of work which meets the clients requirements
- Re-programme the project in light of revised design and project parameters
- Revise planning submission – Extent of revision is likely to be less significant than originally expected as there is no planned alteration to the cladding system or windows;
- Review option to replace the contractor, re-procuring utilising OJEU or an appropriate framework, to be confirmed, is considered the favoured route to clearly establish a competitive market price for the works;
- Impose formal change management controls - client and contractor;
- Obtain formal approval to proposals;
- Utilise additional time to gain access to site, survey and validate systems; and
- Progress completion of appointments with all speed.

At a meeting between the TMO and Appleyards on 21<sup>st</sup> May 2013, it was confirmed by the TMO that the question of value for money on the project is a primary driver with the programme as a secondary.

In light of the foregoing, our original recommendation; to review options to replace the contractor be taken forward, as indications are that value for money will be enhanced by re-procuring the construction

element as opposed to proceeding with the existing contractor arrangement, perpetuated from the experiences encountered on the Kensington Academy and Leisure Centre Project.

Further; during negotiations with the Leadbitter, despite protracted efforts to align cost plans, the contractors estimated costs remain at variance with Appleyards QS. This would appear to support the contention that there may be allowances included within the contractors pricing which are not visible to the TMO.

As already stated, there remain two options available for re-procuring a contractor for the scheme:

- Utilise an appropriate framework to select a contractor; and
- Submit a full OJEU compliant procurement exercise.

The former has the advantage of identifying alternative contractors whilst minimising prolongation of the programme.

Whilst the second option would give fuller access to the open market and the opportunity to secure the most competitive tenders at the expense of a potentially longer programme to achieve.

Given that the amended project brief gives primacy to value for money for the project we recommend that the TMO re-procures the Principal Contractor through an OJEU compliant, open Market tender.

Furthermore, by submitting to a restricted tender list in connection with a framework procurement solution, this could exclude Leadbitter from the opportunity to fairly bid for the work. It is our opinion, that to do this would expose the TMO to the risk that Leadbitter might seek to challenge the re-procurement process with attendant effect on time and cost to the project.

An OJEU compliant re-tendering exercise would, in our opinion, provide the TMO with the best opportunity to secure proven competitive market rates for the construction whilst maintaining the opportunity for Leadbitter to bid competitively for the work, negating the risk of a challenge to the process.



## APPENDIX A

Stage D Cost Comparison, April 2013

## APPENDIX B

### Leadbitter Commentary on Present Status

(NB the opinions put forward in this commentary are those of the author and may not necessarily accord with Appleyards)



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