



# RESOURCES AND SERVICES OVERVIEW AND SCRUTINY COMMITTEE

<b>DATE:</b>	<b>Monday, 22 July 2024</b>
<b>TIME:</b>	<b>7.30 pm</b>
<b>VENUE:</b>	<b>Town Hall, Station Road, Clacton-on-Sea, CO15 1SE</b>

**MEMBERSHIP:**

**Councillor P Honeywood (Chairman)**  
**Councillor M Cossens (Vice Chairman)**  
**Councillor Bensilum**  
**Councillor Doyle**  
**Councillor Harris**

**Councillor S Honeywood**  
**Councillor Newton**  
**Councillor Smith**  
**Councillor Steady**

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DATE OF PUBLICATION: Wednesday, 17 July 2024

## AGENDA

### 7 **The Spendells Project - (Pages 5 - 44)**

To consider the circumstances that led to the unauthorized expenditure being incurred in respect of the reconfiguration of Spendells House, Naze Park Road, Walton on the Naze, to provide temporary housing.

The enquiry shall receive an update on the Spendells project, the outcomes of the investigations into the unauthorised expenditure and the learning (and application of that learning) to other major projects and programmes.

### **Date of the Next Scheduled Meeting**

*The next scheduled meeting of the Resources and Services Overview and Scrutiny Committee is to be held in the Town Hall, Station Road, Clacton-on-Sea, CO15 1SE at 7.30 pm on Tuesday, 3 September 2024.*

## **Information for Visitors**

### **FIRE EVACUATION PROCEDURE**

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## RESOURCES AND SERVICES OVERVIEW AND SCRUTINY COMMITTEE

22 JULY 2024

### JOINT REPORT OF THE PORTFOLIO HOLDER FOR HOUSING AND PLANNING AND THE ASSISTANT DIRECTOR BUILDING AND PUBLIC REALM

#### A.2 SPENDELLS PROJECT

(Report prepared by Andy White)

##### **PURPOSE OF THE REPORT**

To provide the Committee with an update on the progress of the Spendells project and specifically the unauthorised overspend.

To respond to the specific issues raised by the committee in relation to the project.

##### **SCOPE - THE AIMS AND OBJECTIVES OF THE REPORT**

To outline issues and progress since the decision by Cabinet on 24 May 2024, report and financial supplement attached as Appendices A and B. The Minute Extract from the Cabinet Meeting in respect of this matter is attached as Appendix C.

To address specific issues raised by the Committee:

- Explanation of Portfolio Holder oversight that was in place.
- Our rules and procedures surrounding project development.
- Linear path explanation of events, dates and costs of the overspend
- What is the assessed impact this will have on the Council going forward, both reputationally and financially.

##### **INVITEES**

Leader of the Council, Portfolio Holder for Housing and Planning, Chief Executive, Corporate Director Operations and Delivery, Assistant Director of Building and Public Realm, Assistant Director Finance and IT and Assistant Director Governance

##### **BACKGROUND**

The background to the project is set out in the Cabinet report appended at Appendix A.

##### **RELEVANT CORPORATE PLAN THEME/ANNUAL CABINET PRIORITY**

Under Article 6.02 of the Constitution the separate Overview & Scrutiny Committees (OSCs) perform the role of overview and scrutiny in relation to:

##### **Resources and Services OSC**

*“the effective use of the Council’s resources including approval of discrete researched and evidenced reviews on the effectiveness of:*

*Financial Forecast and Budget setting and monitoring (including the General Fund and the Housing Revenue Account)*

## **Corporate Plan Theme**

- Financial Sustainability and Openness

## **DESIRED OUTCOME OF THE CONSIDERATION OF THIS ITEM**

It is proposed that the Committee considers the report and enquiries at the meeting and considers whether it wishes to make any representations or recommendations to the Cabinet or the Portfolio Holder and/or pursue enquiries into issues that have been identified to it in this report (and consideration thereof) and, if so, determines the scope of such enquiries.

## **RELEVANT NATIONAL GUIDANCE FOR OVERVIEW AND SCRUTINY**

In considering this matter, it is useful (at this point) to remind ourselves of the Statutory Guidance for Councils in respect of 'Overview and Scrutiny'. The full version of the current guidance is available here:

<https://www.gov.uk/government/publications/overview-and-scrutiny-statutory-guidance-for-councils-combined-authorities-and-combined-county-authorities/overview-and-scrutiny-statutory-guidance-for-councils-combined-authorities-and-combined-county-authorities>

Within the guidance states that effective overview and scrutiny should:

- provide constructive 'critical friend' challenge
- amplify the voices and concerns of the public
- be led by independent people who take responsibility for their role
- drive improvement in public services and strategic decision-making

The above provides a useful guide for all concerned as this report, and the enquiry into this matter, is undertaken. Further to this, the attention of Members is also drawn to the Council's own Cabinet-Scrutiny Protocol (developed having regard for the statutory guidance) includes the following:

"All Members should promote an atmosphere of openness at Overview & Scrutiny Committee meetings and should strive to ensure that questioning and debate takes place within a climate of mutual respect and trust."

Within the Government's Statutory Guidance on the Best Value Duty ("the Guidance") refers to the importance of scrutiny and accountability throughout.

Under the Continuous Improvement Best Value theme the Guidance states "*The Chartered Institute of Public Finance and Accountancy (CIPFA) /Society of Local Authority Chief Executives (SOLACE) Delivering Good Governance in Local Government Framework, along with the Centre for Governance and Scrutiny and Local Governance Risk and Resilience Framework can help authorities to identify, understand, and act on risks to good governance*".

Characteristics of a well-functioning authority (under Continuous Improvement theme) include "*The authority's scrutiny function is challenging, robust and contributes to the efficient delivery of services*".

The Governance Best Value Theme is described within the Guidance as:

*“In a well-run council officers and members will have a clear understanding of the democratic mandate as it operates in the organisation.*

*There will be clear and robust governance and scrutiny arrangements in place that are fit for purpose, appropriate to the governance arrangements adopted locally (executive / committee system), and in accordance with statutory or sector guidance such as statutory guidance on overview and scrutiny and the Centre for Governance and Scrutiny’s governance risk and resilience framework. These arrangements should be understood by members and officers alike, reviewed regularly and accurately described in the Annual Governance Statement.”*

Characteristics of a well-functioning authority (under Governance theme) include “*Scrutiny and internal audit functions are challenging, robust, valued and contribute to the efficient delivery of public services*”.

The Centre for Governance and Scrutiny (CfGS) promotes that effective, member-level oversight of financial matters is a cornerstone of good governance. The CfGS produced guidance for councillors on audit committees and scrutiny committees on how member-level activity on audit, and councils’ scrutiny functions, can work more closely (recognising their maybe perceived overlap). There are some practical ways for councillors, and the officers supporting those roles, to share information and work together better to ensure robust financial oversight. Scrutiny is concerned with the review of policy, its formulation and implementation, areas (from CfGS Guidance) highlighted for consideration include:

**Action on mindset and culture:**

Culture here is about the attitudes, behaviours and values of those involvement in the management and oversight of financial management. Scrutiny can use its role to test and challenge the presence of this culture across the organisation as part of its wider role.

**Securing good governance:**

Scrutiny’s inquiries can also serve to identify weakness and risk in this area.

**Risk:**

Risk can provide an important framework for prioritising matters on the work programme – it can be used as a tool to understand where pressures and weakness lies on which scrutiny can contribute productivity.

**Value for Money:**

All authorities have a responsibility to make arrangements to secure “best value”, and continuous improvement, under the Local Government Act 1999 – ensuring that scrutiny and audit work closely together on this critical issue is likely to be important. Audit and scrutiny have distinct and complementary roles here. Audit oversees the adequacy of arrangements to secure VfM while scrutiny can delve into performance and outcomes.

**Wider policy issues, and the impact of the Council’s strategy on financial management:**

This may include way the Council works with its partners (and exposure to risk in respect of those matters). This may include the way that the council procures and outsources services, its approach to borrowing and the capital strategy, its approach to commercial activity, and other local factors which may influence financial affairs.

## DETAILED INFORMATION

Spendells House was a 1960s constructed sheltered housing scheme with shared washing facilities and limited living space by modern standards. Spendells House is at Naze Park Road, Walton-on-the-Naze, Essex, CO14 8JJ. By 2017 the scheme was under occupied, hard to let and suffering from a number of repair and maintenance difficulties. At the same time the Council was (and still is) experiencing high and increasing demand to provide temporary housing for homeless people. At national level it was reported that homelessness had increased by around 13%. That demand had substantially exceeded the available accommodation in the stock and had resulted in the block booking of hotel rooms.

The Council committed to the closure of the scheme and remodelling it into accommodation for the homeless. The progress of the project, decisions and issues encountered are detailed in the report to Cabinet dated 24 May 2024 and appended as Appendix A.

Cabinet also considered an addendum report, which provided it with the formal written comments of the Council's statutory Section 151 Officer on this matter. The Addendum is appended as Appendix B.

Since Cabinet's decision on 24 May 2024 the following has occurred:

- a) The Chief Executive has instructed that a formal review to be undertaken to provide further clarity on how the issue arose and developed (including the governance arrangements associated with issuing verbal orders), which in turn can inform any further actions along with informing decision making and project delivery in the future, this is currently underway.
- b) The Chief Executive has sent a directive to all Senior Managers relating to financial and budget management, which explains the consequences and expectations of them in their roles and will be supported by further collective meetings with Senior Officers over the coming weeks / months; and
- c) has commenced arrangements for the implementation of a Senior Officer Project 'Board' that in turn will report directly to the Council's Senior Management Team on a regular basis. This is ongoing.

A detailed investigation and negotiation around the issues identified with internal Fire doors were progressed with mixed outcomes:

- Potential to upgrade and reuse existing doors was ruled out by Building Control.
- The Contractor negotiated bulk rate for the manufacture of new doors, if they were all to be completely renewed together
- The need for an additional three, one-hour fire-resisting doors to electric meter cupboards was identified.
- The time taken to investigate and conclude these matters resulted in an additional three week extension of the contract which has a corresponding cost increase associated with it.
- Under delegated powers an agreement to reallocate funds from within the overall HIP's programme, from the cash incentive scheme to the project to allow the necessary further instructions to be issued. There is no expected financial impact given the historic demand/application of the cash incentive scheme.
- The project has been reinvigorated on site in physical terms and is progressing towards completion to revised budget and timescale on 04 September 2024.



To address specific issues raised by the Committee:

Explanation of Portfolio Holder for Housing and Planning oversight that was in place.

As set out in the introduction to the Addendum Report, item A6, 24<sup>th</sup> May 2024.

*“The issues set out in the main report emerged during Q4 2023/24 and was referenced within the financial performance report that was considered by Cabinet on 19 April 2024. Since the issue emerged, the Council’s Senior Management Team / Leader and Housing and Planning Portfolio Holder have been working with the Service to better understand the situation and the level of potential overspending / unauthorised expenditure.*

*Given the wider financial risks, such as the consequences of potentially suspending the on-going refurbishment works, and as the scale of the issue has only recently been established as part of the 2023/24 outturn review, the project continuing in the interim period was acknowledged.*

*The report considered by Cabinet in April referred to above indicated that the matter would be revisited as part of finalising the outturn report for 2023/24. However, the work associated with finalising the outturn position for 2023/24 has now been completed and given the scale of the issue, a separate report is being presented to this meeting of Cabinet rather than wait for the wider outturn report to be presented to Cabinet in July to ensure the matter can be addressed as timely as possible.”*

In respect of the timeline, the Portfolio Holder was first made aware of issues relating to overspends in February 2024.

Our Rules and Procedures surrounding project development.

The key elements of the Council’s relevant procedures are set out the Addendum to Cabinet 24th May 2024.

The internal review of the project, led by the Internal Audit Manager, is expected to identify areas of potential improvement to comply with the governance framework, where necessary or appropriate.

Linear path explanation of events, dates and costs of the overspend.

Appendix D provides a timeline of costs and significant events. Detailed financial information is also set put in the Addendum Report.

What is the assessed impact this will have on the Council going forward, both reputationally and financially.

Although at the present time the HRA outturn position for 23/24 has yet to be finalised, it is currently expected that an overall, favourable variance of approximately £500k will remain at the end of 23/24. Which would be transferred to the HRA general balance. This would largely offset the additional £860k that was approved by Cabinet in May 24 to successfully complete the project. It is also proposed to explore opportunities during 24/25 to actively manage the overall HRA programme to limit any long term impact of the Spendells House scheme.

It is acknowledged that the financial aspect of the project could be seen negatively. However, in use the facility will provide accommodation for homeless families and will reduce the need for hotel accommodation. This is especially important given the significant

financial impact on the General Fund budget. Wider value for money considerations were given in the Addendum report, 24<sup>th</sup> May. It is likely that in use the facility will be reputationally positive and that this will be the more enduring reputational effect.

## RECOMMENDATION

**That the Committee determines whether:**

- (a) it has any comments or recommendations it wishes to put forward to the relevant Portfolio Holder or Cabinet; and/or**
- (b) it wishes to pursue enquiries into issues that have been identified to it in this report (and consideration thereof) and, if so, determines the scope of such enquiries taking into consideration the Overview and Scrutiny function and adjusts its work programme accordingly for 2024/25.**

## PREVIOUS RELEVANT DECISIONS

In addition to the decisions listed in Appendix A:

Cabinet Members' Items - Report of the Housing & Planning Portfolio Holder - A.6 - Further Update on Spendells House and Review of Budget and Reference under Section 5 of the Local Government and Housing Act 1989 24/05/2024

Budget Virement - Housing Revenue Account Capital Schemes

## BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None – other than those published documents referenced in this report.

## APPENDICES

Appendix A - Report to Cabinet dated 24 May 2024

Appendix B - Addendum to the above prepared by the s151 Officer

Appendix C – Minute Extract from the Cabinet meeting on 24 May 2024.

Appendix D – Timeline illustration.

## REPORT CONTACT OFFICER(S)

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## CABINET

24 MAY 2024

JOINT REPORT OF THE PORTFOLIO HOLDER FOR HOUSING & PLANNING  
& MONITORING OFFICER**A.6 Further Update on Spendells House and Review of Budget and Reference under Section 5 of the Local Government and Housing Act 1989****PART 1 – KEY INFORMATION****PURPOSE OF THE REPORT**

- To update Cabinet on progress with Spendells House being retained and reconfigured for the provision of temporary housing accommodation.
- To seek continued support for the project in the light of the options available and the ongoing need for the accommodation.
- To seek additional funding for additional work to address matters that were not within the specification and were brought to light in the course of the project.
- To inform Members of a breach of the Council's Financial Procedure Rules and legal decision making requirements with regard to variation of a contract without sufficient approvals in place and the actions taken in response.

**EXECUTIVE SUMMARY**

The Monitoring Officer is a co-author of the Report, only in so far as complying with the Section 5A of the Local Government and Housing Act 1989 obligations.

**Background to bringing in new temporary accommodation to support the District's homelessness challenge**

Spendells House is a 1960s constructed sheltered housing scheme with shared washing facilities and limited living space by modern standards.

By 2017 the scheme was under occupied, hard to let and suffering from a number of repair and maintenance difficulties.

At the same time the Council was (and still is) experiencing high and increasing demand to provide temporary housing for homeless people. At national level it is reported that homelessness has increased by around 13%. That demand has substantially exceeded the available accommodation in the stock and results in the block booking of hotel rooms.

Hotel rooms are costly and are unsuited to decent family accommodation for daily life. Cooking and laundry facilities are rare and hotel occupancy policies are not well suited to family life.

On 10 November 2017 Cabinet received the report of the then Housing Portfolio Holder and approved formal consultation on the future of two Sheltered Housing Schemes including Spendells House.

## APPENDIX A

On 15 January 2018 Cabinet agreed waiver normal processes for allocating secure tenancies to enable the displaced and transferred tenants of Spendells House, Walton to be granted secure tenancies at alternative addresses

On 15 January 2018 the Service Development and Delivery Committee considered the future of the Honeycroft and Spendells sheltered schemes and supported the principle of closure of the schemes, subject to some supplementary recommendations.

On 26 January 2018 Reference from Service Development and Delivery Committee - Honeycroft and Spendells

On 16 February 2018 Cabinet considered a reference from the Service Development and Delivery Committee on the consideration of the future of the Honeycroft and Spendells Sheltered Housing Schemes. Cabinet noted the recommendations and welcomed the Committee's support.

On 23 March 2018 Cabinet received the report of the then Housing Portfolio Holder and decided on the Closure of two Sheltered Housing Schemes.

On 26 June 2020 Cabinet decided to bring Spendells House back into use as temporary accommodation - A.5 – minute no. 25

Officers arranged for the site to be stripped internally of all asbestos and a specification and a formal procurement process were completed.

The procurement process was completed, in accordance with the Council's Rules of Procedure and the lowest tender returned was in the sum of: £1.25m.

On 23 September 2022, a further decision by the then Cabinet was proposed in order to consider a report on the review of budget position and award of contract and agreed to Spendells House.

On 16 December 2022, the then Cabinet considered a report on the review of budget position and award of contract and agreed to continue to support the project subject to decision of the full Council to allocate revised budget ref: 10504

On 14 February 2023, the Full Council decided to allocate additional funding for the project as part of the HRA budget setting process

### **The project faced cost increases before commencement on site due to national construction inflation**

On 03 March 2023, a proposal for further decision on the future use of Spendells House, Walton-on-the-Naze - Approval of financial business case was published.

On 13 June 2023, the Housing & Planning Portfolio Holder, Leader of the Council and Corporate Finance & Governance Portfolio Holder considered an update on Spendells House and Review of Budget. The Leader and Portfolio Holder noted the increased costs, to be financed through capital receipts, noted the updated business case and confirmed support for the project. ref: 11505

## APPENDIX A

Renewed engagement with the lowest tenderer highlighted that since the submission of tenders costs had increased through inflation and that an additional £0.077m would be needed if the scheme were to be progressed.

On 21 July 2023, the Housing & Planning Portfolio Holder, Leader of the Council and Corporate Finance & Governance Portfolio Holder considered a further update on Spendells House and further review of budget and agreed to continue with the project proposing to finance additional costs by reallocating money from within the HRA capital programme ref: 11622

On 01 August 2023, the Corporate Director, in consultation with the Portfolio Holder with responsibility for Housing decided to appoint ARC to complete the work and to authorise the Head of Legal Services to enter into the construction contract.

Work on site started on 16 October 2023.

### **Additional works were required beyond the original specification and implementing them also caused delays, both of which further increased costs**

During construction the need for additional work on a number of matters including:

1) Fire compartmentation was incomplete above ceiling level and additional partitioning is required in order to limit potential fire spread in the roof void.	Issue discovered after the start of the works when the contractor accessed the loft space.
2) The electrical supply was found to be inadequate for the new electrical heating system and it was necessary to seek advice and quotation from the utility company which took some time to secure.	Specific analysis carried out by the electrical contractor followed by advice from the utility company on their infrastructure capacity.
3) Water supply pipework was found to have a number of dead legs and sizing issues in relation to the new sprinkler system. Water heating to the laundry and shower areas had to be added to the works.	Partly caused by updated regulations but also erroneously not included in the outgoing specification.
4) Drainage at the site was discovered to be broken and defective in some locations and in need of repair works.	Issues discovered once the areas were opened up by the contractor.
5) Flat entrance doors and their fanlights and side screens were identified as not being fire rated.	An issue not recognised in the design stages.
6) Flushing in of wiring and ground floor suspended ceilings were added in order to reduce long term risk of damage to services that would otherwise have been surface mounted.	Late change by the project team aimed at reducing long term costs.
7) A balcony area at the rear of the building was found to have a defective roof covering and it was proposed to replace the area with a section of sloping roof to match the remainder of the building.	Late change by the project team aimed at reducing long term costs.

These additional works were not included within the original specification, for the various reasons identified above and therefore not priced for as part of the successful tender. Accordingly instructions for various additional works have been issued at a total estimated cost in the order of £0.525m. The financial effect of delays to the contract building up as a result of the additional work itself and awaiting the conclusions of the utility provider amounts to an estimated £0.175.

The breakdown of these extra costs is included in the Current Position section of this report. It is estimated that the final cost of the main contract will now amount to £2.1m, representing an increase in the contract sum of £0.77m, together with the previous expenditure of £0.149m and the inflationary effect on the contract before acceptance of £0.077m, amounts to a total cost of £2.25m. Additionally the estimate for the revenue cost of furniture and equipment has risen from £60k to £70k owing to the passage of time and inflation. Changes to contract costs are further expanded in the Current Position section.

The financial effect of these instructions issued is to increase the cost of the project beyond the authority granted and the budget established.

### **The Council has to take a value for money decision on the project now**

Simultaneously the cost of temporary housing provision has also escalated.

The Council has a choice of whether to continue with the contract, increasing funding and confirming the additional works identified or negotiating and end to the contract and then either discontinue the project or seek a further contractor to complete the project. These options are expanded in the Other Options Considered section of the report. It is the view of officers that a negotiated termination of the contract would be costly, a cheaper completion of remaining work cannot be predicted and design and procurement timescales would incur property holding costs and an opportunity cost in terms of delayed opening of the accommodation and the cost savings that it is intended to deliver.

The primary purpose of the scheme is to provide accommodation for homeless people and families. The financial cost of hotel provision to meet these needs is unaffordable in the long term. There is also a social value to better local provision: keeping local people in their area, with their schools, jobs, support networks and family support.

Having got to this point the best value option from here is to continue with the project and the current contract.

- It is proposed that Cabinet continues to support the Spendells House site being retained and reconfigured for the provision of temporary housing accommodation
- It is proposed that an additional £0.850m capital and £0.01m revenue is allocated from reserves to facilitate the completion of the project.

### **Some of the additional project costs were incurred without proper authorisation.**

The Council's financial procedure rules were not followed by project team by the seeking of funding for variations before commitments were made to the contractor. Accordingly, instructions have been given for which there is no authority and no budget.

## APPENDIX A

This is a report issued under Section 5 of the Local Government and Housing Act 1989 to inform Members that Tendring District Council, has through contract management, varied the contract works beyond the scope of the approvals in place, through previous decision making and sufficient budget provision. The Council is required by law to consider this report and decide what action (if any) to take in response.

The Chief Executive and the Assistant Director (Finance & IT) & Section 151 Officer have both been consulted on this report, as required by the legislation.

The Portfolio Holder and the Management Team, in particular the Monitoring and s151 Officers, have raised significant concerns with the project team. The project team acknowledges that in order to limit the stalling of the project officers gave instructions to the contractor to proceed with works which will lead to the final cost substantially exceeding the contract sum and the approved budget without the relevant approvals in place.

### **As a result the Council has reviewed its implementation of financial controls**

The Internal Audit Team has been asked to look at the Council's arrangements for project management including any learning that should be embedded in relation to the Spendells conversion. The Audit team's report will be completed in the future. Notwithstanding, there are some interim measures that officers propose to implement directly:

- Take a more measured and realistic approach to internal resources: Seek consultancy leadership in the delivery of major projects and factor those costs in from the start.
- Implement project review points in the development stages to ensure scope is not stretched and that financial review forms part of change processes.
- Ensure that realistic contingencies are included in all contracts and that realistic timelines are established at the early stages.
- Implement short term in-house development for staff in contract and project management.
- Identify appropriate staff to take part in formal project management training and potentially qualification.
- Include the importance of budgetary control and governance in one to one reviews.
- Hold monthly finance meetings between service and finance staff and formalise project review into monthly Portfolio Holder meeting agendas.

The costs and timeline of this project have increased substantially. There are a number of areas of learning to be drawn out of events. However, the fundamental reasons for commencing remain valid:

- Accommodating homeless people in more suitable facilities
- Reusing a redundant building
- Revenue cost saving

### **RECOMMENDATION(S)**

**It is recommended that Cabinet:**

## APPENDIX A

- a) receives and considers the Monitoring Officer's report and in response, notes the update on progress, increased contractual costs and additional budgets required to complete the project;
- b) continues to support, acknowledging the risks highlighted, the principle of the Spendells house site being retained and reconfigured for the provision of temporary housing accommodation;
- c) noting the financial implications incurred but that the most cost effective route forward is to complete the scheme and the contract in place;
- d) allocates an additional £0.850m capital an £0.01m revenue from reserves to facilitate the completion of the project;
- e) subject to the above, authorises the additional contractual works to be undertaken and recorded through contract management, as set out in the report;
- f) acknowledges that managers have been reminded of the internal control arrangements in place and the need for these to be followed in order to ensure such contract instructions are not proceeded with in future without the necessary approvals in place; and
- g) requests that the Portfolio Holder for Housing and Planning provides corporate oversight of the completion of the project within the approvals in place.

### REASON(S) FOR THE RECOMMENDATION(S)

To progress the provision of council owned and managed temporary housing accommodation. In order to formally receive the Section 5 report from the Council's Monitoring Officer and to consider its contents and Cabinet's response thereto.

Approval from Cabinet is required for the contractual instructions and budget allocation, as variation orders have already been issued for the additional works, which are necessary to complete the project. There is a reputational risk associated with this decision, as the Council has not followed its governance arrangements in this instance but operational measures and all managers have been formally written to reminding them of the seriousness of over-expenditure and committing to unfunded expenditure. Managers are reminded of the robust internal controls in place and the absolute need to follow them in order to ensure that this event does not occur again.

### ALTERNATIVE OPTIONS CONSIDERED

Costs expressed below are indicative estimates of additional or avoided costs.

Option	Detail	Financial effect
1. Discontinue the project.	A termination of the existing building contract would be necessary. Such a termination would have to be negotiated and would include a compensatory payment to the contractor. The Council would be left with a part finished project and a redundant building which would generate	To terminate the contract: £0.5m Holding costs for the vacant site: £0.1m pa.



## APPENDIX A

	additional revenue costs. The full costs of alternative temporary accommodation would continue. Due to the rising cost of providing external accommodation and other abortive and unproductive costs associated with it this option has been discounted.	Ongoing hotel costs: £0.27m pa Less furniture costs: -£0.06m
2. Terminate the current contract and seek to reprocure remaining works.	A termination of the existing building contract would be necessary. Such a termination would have to be negotiated and would include a compensatory payment to the contractor. The Council would have to carry out a further procurement process in order to complete the works which would generate additional revenue costs and incur additional delay. The full costs of alternative temporary accommodation would continue meanwhile. Due to the rising cost of providing external accommodation and other abortive and unproductive costs associated with it this option has been discounted.	To terminate the contract: £0.5m Reprocured contract: £0.8m Holding costs for the vacant site: £0.1m (one year). Ongoing hotel costs: £0.27m (one year) Additional furniture costs £0.01m
3. Allocate additional funds, confirm variation instructions to the contract authorising the additional works and complete the project.	Although additional work has been found to be necessary the revisiting of the business case has found that to continue with the project is financially advantageous. Additional funding can be allocated from HRA reserves. It is proposed to progress this option.	To complete the contract: £0.805m Additional furniture costs £0.01m

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

The Corporate Plan priorities include:

Pride in our area and services to residents

“We want to put residents’ first, by promoting clean and tidy communities, providing decent housing that everyone deserves...”

Financial Sustainability and openness

“... carefully planning what we do, managing capacity, and prioritising what we focus our time, money and assets on...”

### OUTCOME OF CONSULTATION AND ENGAGEMENT

The decision to cease the use of the site as a sheltered scheme was made following consultation with residents. Planning and governance decisions were all made through the Council’s formal processes and therefore facilitated consultation and feedback. The Council’s

Tenants' Panel considers the capital programme on an annual basis and forms the cornerstone of ongoing tenant consultation.

### **LEGAL REQUIREMENTS (including legislation & constitutional powers)**

This is a report issued under Section 5A of the Local Government and Housing Act 1989, which states that a duty of a relevant authority's Monitoring Officer shall be to prepare a report, if it at any time appears to them that any proposal, decision or omission by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any joint committee on which the authority are represented constitutes, has given rise to or is likely to or would give rise to—

- (a) a contravention by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any such joint committee of any enactment or rule of law or of any code of practice made or approved by or under any enactment; or
- (b) any such maladministration or failure as is mentioned in Part 3 of the Local Government Act 1974 (Local Commissioners).

The contract is formed using a Joint Contracts Tribunal (JCT) Intermediate Building Contract. This is a construction industry standard contract which includes standard provisions on issuing of instructions to vary the work. Variation instructions are common in all building contracts. They allow the team to react to changes in regulations, for previously hidden issues to be resolved and for client requirements to shift over time and for projects to begin while some matters are yet to be determined. The scope for contracts to be varied is not limitless, the nature of the project in general cannot change say from one type of building to another or to be fundamentally different in scale.

In the current case the contract is to convert a redundant sheltered scheme into temporary accommodation for homeless people. This remains the fundamental nature of the project. However, variation instructions have been given to address some work that was not set out in the specification, some matters where regulatory requirements have changed since the drafting of the specification, some matters that have come to light during the work such as failed drainage and an inadequate electrical supply as well as some matters that are changes in client requirements such as the concealing of pipes and wire in order to reduce the likelihood of damage in the future. A more detailed list of changes is set out in the Current Position section of the report. These changes are facilitated by the nature of the JCT building contract. The changes are more numerous and significant than would be ideal but they do not necessitate a revision of the contract documents.

### **Modification of contracts during their term under Public Contract Regulations:**

Regulation 72 of the Public Contract Regulations 2015 describes a number of changes that can be made to awarded public contracts without triggering a requirement to conduct a fresh tender process:

The modification does not do any of the following:

- a) render the contract materially different in character;
- b) introduce conditions which, if part of the original procurement procedure, would have:

- i) allowed for the admission of bidders other than those selected; or
- ii) allowed for the acceptance of a tender other than that originally accepted; or
- iii) attracted additional participants in the procurement procedure;
- c) change the economic balance of the agreement in favour of the contractor in a manner not provided for in the initial agreement;
- d) extend the scope of the agreement considerably; or
- e) result in a contractor replacing the contractor that was originally awarded the contract otherwise than provided for under ground 6 (below).

This ground effectively codifies the position from the leading case on material variations into the Regulations. If the modification falls foul of any of the limbs listed above, a contracting authority will not be able to rely on this ground. Care should be taken when applying these tests as an incorrect application could lead to legal challenge.

It is the view of the project team officers that all of the grounds for the application of this test are met:

- a. the contract began as the conversion of a specific building from one use to another and remains so,
- b. no conditions are varied or introduced,
- c. the economic balance is governed by the standard contract and remains so, fair payment for any additional works,
- d. the contract began as the conversion of a specific building from one use to another and remains so,
- e. the contracting parties are unchanged.

The regulation provides a further set of circumstances which have been considered:

For additional works, services or supplies by the original contractor that have become necessary and were not included in the original procurement where a change of contractor:

- a) cannot be made for economic or technical reasons; and
- b) would cause significant inconvenience or substantial duplication of costs for the contracting authority, provided that any increase in price does not exceed 50% of the value of the original contract.

This ground could prove useful in the case of necessary and unpredictable work, especially as it allows a substantial increase in the overall contract price. However, care should be taken when relying on it, particularly in determining and substantiating that change cannot be made for economic or technical reasons and that a change in contractor would cause significant inconvenience or substantial duplication of costs.

If a contracting authority wishes to rely on this ground it will need to publish a notice that it has done so, which will bring (potentially unwelcome) scrutiny to its decision to vary the contract without tendering. On a more positive note, this ground can be used repeatedly, and the 50% value test would be considered afresh each time the ground is validly applied.

The position considering this last ground, is that additional works that were not within the original specification are necessary or have become necessary.

## APPENDIX A

- a. Instructions to the original contractor have been issued in line with the standard form of contract. If these instructions had not been issued the project would have been handed over partly complete and not compliant with current regulations.
- b. A further procurement exercise and contract to carry out additional work would have been necessary which would incur cost and delay to the authority.

The cost of variation instructions as listed elsewhere is below the 50% indicated although the function of the contract in terms of extension of time takes the overall budgetary change to greater than 50%. This latter point is a function of the contract rather than a variation of it.

Accordingly it is the view of the project team officers that the provisions of the last ground, could be applicable but the provisions of first ground considered are directly applicable to the circumstances and that the variation of the contract is compliant with Regulation 72.

Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 there is a requirement for executive decisions to be recorded and published whether the decision is made by Cabinet, Portfolio Holder or Officers acting under delegations. Variation to contracts, which are not covered by the scope of initial decision making, should be recorded and published providing an audit trail of the matters taken into consideration and the financial implications of doing so.

### **Powers to carry out the scheme in general.**

Under Part VII of the 1996 Housing Act (as amended) the Council has a duty to provide temporary accommodation to households who are homeless and have an apparent 'priority need' for accommodation according to the legislation.

The Homelessness (Suitability of Accommodation) (England) Order 2003 states that it is unlawful for councils to accommodate families with children in Bed and Breakfast (or accommodation with shared facilities) for longer than six weeks. In 2018/19 we had 31 families who were placed for over six weeks in bed and breakfast type accommodation.

The Spendells scheme would not be regarded as Bed and Breakfast because the Order does not include accommodation which is owned or managed by the local authority, a registered social landlord, or a voluntary organisation.

Provisions within the Housing Act 1985, sections 9 and 56, allow for the Council to designate the building as a hostel for the provision of housing accommodation and therefore, accounted for within the HRA. This means that conversion works, repair and maintenance costs can be funding through the HRA and there is no requirement to appropriate the use of the land for alternative purposes.

<b>Is the recommendation a Key Decision (see the criteria stated here)</b>	<b>YES/NO</b>	<b>If Yes, indicate which by which criteria it is a Key Decision</b>	<input type="checkbox"/> <b>Significant effect on two or more wards</b> <input checked="" type="checkbox"/> <b>Involves £100,000 expenditure/income</b> <input type="checkbox"/> <b>Is otherwise significant for the service budget</b>
		<b>And when was the proposed decision</b>	General urgency procedure has been followed in this case to allow a key

## APPENDIX A

	<p><b>published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)</b></p>	<p>decision to be made without delay in order to allow the project to continue rather than to be paused pending decision.</p>
<b>X</b>	<p><b>The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:</b></p>	
<p>The Monitoring Officer is a co-author of the Report, only in so far as complying with the Section 5A of the Local Government and Housing Act 1989 obligations and has not been directly provided with information regarding the specification, contract and variations and requests Cabinet to rely on the assurances provided by the project team officers. The previous decisions have however, been reviewed.</p> <p>In the previous decision section of this Cabinet report, the last decision made (recorded and published) in relation to the Spendells project was on 1<sup>st</sup> August 2023, to appoint the main contractor to complete the Refurbishment and Adaptation works, accept the revised tender of ARC Group London to carry out the works and to instruct the Head of Legal Services to enter into the contract with ARC Group London on behalf of the Council. The Tender Price was redacted but referred to in a previous decision of the Housing &amp; Planning Portfolio Holder and the Leader of the Council and Corporate Finance &amp; Governance Portfolio Holder on 13<sup>th</sup> June 2023, which referred to a contract price of £1.25million. A further decision by the Housing &amp; Planning Portfolio Holder and the Leader of the Council and Corporate Finance &amp; Governance Portfolio Holder on 21/07/2023 included the additional inflationary costs that had become apparent.</p> <p>Whilst it is accepted that with JCT contracts, variations are permitted through contract management, the governance needs to be in place beforehand to ensure unauthorised spend is not committed. No further decisions have been made to authorise the variations to the contract to increase its cost, ensure the business case was still advantageous, value for money considerations and ensure the budget provision was in place. Any instructions issued seeking variations to the works are consequently unauthorised and this report is informing Cabinet that rectification is required.</p> <p>Instructions were given by the project team to the contractor without following the Council's Financial Procedure Rules. The s151 officer will provide a further note detailing these rules and the breaches in advance of the meeting.</p>		
<p><b>FINANCE AND OTHER RESOURCE IMPLICATIONS</b></p>		
<p><b>Finance and other resources</b></p> <p>The original estimate for the project was £0.600m as included in HRA capital programme for 2022/23. This was increased to £1.400m and it now appears that the final cost will be £2.250m.</p> <p>The total budget within the 2023/4 financial year (excluding prior expenditure) is £1,327,170. Expenditure within that year was £1,084,337.99. A current interim application has been received which would bring total expenditure to £1,360,744.98, some £33,574.98 in excess of the budget.</p>		

## APPENDIX A

A cost of £183,000 has been included in the financial predictions for works to fire doors. The extent and cost of these works is subject to ongoing review.

A cost of £175,750 has been included in the financial predictions for the financial effect of delays to the project. This is based on the projected revised completion date, which in turn is based on the delivery of the new power supply by the utility company.

Other works ordered (detailed in the Current Position section of the report) bring the total estimated cost to £2.25m, some £850,000 in excess of the approved budget, There is no authority or budget for this expenditure.

The increase can be partly attributed to inflationary pressures seen across the construction industry and is broadly consistent with higher-than-expected costs experienced with other high value construction projects the Council is involved with, as previously reported.

However, it is impossible not to have concerns about the management of the project at all stages. Recent cost increases (detailed elsewhere in the report) can be partly attributed to physical factors being uncovered during the course of the work but also partly due to items that should have been in the specification but were missed or design changes made by the team at a later stage.

The contingency sum included in the contract was inadequate given the nature of the work. The Council's financial procedure rules were not followed by the seeking of funding for variations before commitments were made to the contractor. Accordingly, instructions have been given for which there is no authority and no budget.

In addition to the additional works ordered there is a substantial cost generated by delay in the project related mainly to the identification of the inadequacy of the incoming electrical supply followed by the lead time to receive advice and pricing from the utility company and then consideration of options to resolve that situation. Under the contract the contractor is entitled to an extension of time and for payment for additional staffing, hire, security and other costs resulting.

The authority's Audit Team has been asked to review project management in general including considering lessons that may be learned from this project.

In light of this increase in costs, it is impossible to confirm that the financial appraisal / business case that was set out within the original report to Cabinet in June 2020 to determine if value for money can still be reasonably demonstrated owing to the potential for changing circumstances during an elongated pay-back period.

The options included later in this report include the termination of the contract, either then seeking a further contract or completely discontinuing the project. Although the business case as initially conceived can no longer be confirmed the Council has substantial commitment to the project already and from the current position the only course that can now be recommended is to allocate the additional funds from the HRA reserves and complete the project and the contract as quickly as it may now be achieved.

Allocation of funding from reserves affects the ability of the Council to respond to other issues.

## APPENDIX A

### Risk

All construction project carry uncertainty risks in this case a large number and value of items. It is the manifestation of these risks that necessitates the allocation of additional resources to the project. The construction of the project is substantially under way and officers consider that it is unlikely that any further unknown issues will be uncovered.

There is a risk associated with increasing homelessness costs. Halting or further delaying the development of this project also delays the opportunity to reduce spending on temporary accommodation.

There is a reputational risk associated with this decision, as the Council has not followed its governance arrangements in this instance but operational measures and all managers have been formally written to reminding them of the seriousness of over-expenditure and committing to unfunded expenditure. Managers are reminded of the robust internal controls in place and the absolute need to follow them in order to ensure that this event does not occur again..

**The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:**

The Section 151 officer has not been able to provide comment within the timeline allowed for this report. A further written update will be provided by him in advance of the meeting as a published addendum report considering the financial implications and other matters arising within their remit.

### USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:

<p>A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;</p>	<p>The authority carefully prioritises its expenditure and considers investment against outcomes through its decision-making processes. In this case the cost of the project has expanded but the position under the business case shows that it would be more advantageous to continue with the process through to completion than to abandon it.</p> <p>There have been a number of formal decisions on this project, listed elsewhere in this report. Although progress has been checked on site by events the decision-making process throughout, up to the realisation of the cumulative effects of the issues encountered in physical terms, the decision-making and governance procedures have been robust.</p>
<p>B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and</p>	<p>Refer to legal requirements</p>
<p>C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.</p>	<p>At the heart of the project lies the idea of reducing long-term temporary accommodation costs. These costs continue to increase and the review of the business case indicates that it is</p>

## APPENDIX A

	advantageous to continue with the project to completion.
<b>MILESTONES AND DELIVERY</b>	
Subject to Cabinet's decision, anticipated opening for the scheme is 15 <sup>th</sup> August 2024.	
<b>ASSOCIATED RISKS AND MITIGATION</b>	
<p>All construction projects carry uncertainty risks in this case a large number and value of items came to light in the course of construction. It is the manifestation of these risks that necessitates the allocation of additional resources to the project. The construction of the project is substantially under way and officers consider that it is unlikely that any further unknown issues will be uncovered.</p> <p>There is a risk associated with increasing homelessness costs. Halting or further delaying the development of this project also delays the opportunity to reduce spending on temporary accommodation.</p> <p>There is a reputational risk associated with this decision, as the Council has not followed its governance arrangements in this instance but operational measures and internal controls have been amended and increased to ensure that this event does not occur again.</p> <p>The increased payback period associated with the increased costs gives rise to a risk that circumstances change: that there will be reduced homelessness or that the cost of other types of accommodation will reduce. If these risks manifest themselves the return on investment will be reduced and the pay-back period further elongated.</p>	
<b>EQUALITY IMPLICATIONS</b>	
<p>The proposal does not impact on the protected characteristics of any individuals. Within the scope of the project it has been decided that the passenger lift to the first floor (previously decommissioned to allow reuse of parts elsewhere) will not be renewed. It is unlikely that there will be sufficient demand for accessible accommodation that the capacity of the specialist provision and other ground floor accommodation will be exceeded. A detailed rationale on this point has been prepared for building control purposes and the lift shaft and services have been retained as a precaution against future potential circumstances.</p>	
<b>SOCIAL VALUE CONSIDERATIONS</b>	
<p>The contract was let taking into account social value considerations as part of the evaluation process in line with national requirements. Inherently the project is socially progressive in that the provision is intended to be more suited to domestic residential needs than much hotel and other accommodation that is currently in use.</p>	
<b>IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030</b>	
<p>The proposals include improved roof insulation, replacement windows and doors, new heating system and low energy lighting. Although the wall structure is not thermally efficient the project team has taken all practical and viable steps to minimise energy consumption in the finished building.</p>	
<b>OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS</b>	
<p>Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.</p>	
<b>Crime and Disorder</b>	The project is likely to be progressive in relation



## APPENDIX A

	to health inequalities and crime and disorder because the provision is intended to be more suited to domestic residential needs than alternative options for temporary accommodation.
<b>Health Inequalities</b>	
<b>Area or Ward affected</b>	Walton

### PART 3 – SUPPORTING INFORMATION

#### BACKGROUND

- Following earlier review and closure decisions on 26 June 2020 Cabinet decided to bring Spendells House back into use as temporary accommodation.
- Officers arranged for the site to be stripped internally of all asbestos together with some other facilitating works at a cost of £149,000. This work was arranged by way of quotations and call off from previously tendered term contracts and a specification and a formal procurement and governance processes were undertaken culminating in a lowest tender received of £1,252,300.
- A review of the business case took place and the project was found to remain advantageous, a revised budget of £1.4m was set.
- During the reassessment and review of the project the nation was experiencing a period of high inflation and the contractor advised that the project had been affected by costs that could not be wholly absorbed. After consideration the contract was let at a sum of £1,330,035.12.

Work on site began on 16 October 2023.

#### CURRENT POSITION

During construction the need for additional work on a number of matters including fire compartmentation, electrical supply, water supply and drainage was identified that were not included in the specification and therefore not in the contract. Accordingly instructions for various additional works have been issued at a total estimated cost in the order of £0.525m. the financial effect of delays to the contract amounts to an estimated £0.175. It is estimated that the final cost of the main contract will now amount to £2.1m, together with the previous £0.149m amounts to a total cost of £2.25m.

Preparatory works costs	£149,000.00
Contract sum	£1,330,035.12
Less contingencies	-£75,000.00
Replacement flat and corridor doors throughout (to meet current fire safety standards)	£183,000 (price still under negotiation)
Upgrade water supply pipework to units (to meet water regulations and provide additional water heaters to communal facilities)	£145,000

## APPENDIX A

Financial effect of extension of time (additional duration of preliminary costs such as security, scaffolding and management)	£175,750
Builders work for new electricity supply (new trench for underground services and enclosure for intake positions etc)	£59,000
Chase electrical services into walls and replaster locally (reduces the long term cost by placing services out of reach of vandals)	£39,000
Renewal of a further area of flat roof covering (roof in a redundant balcony to reduce future costs)	£36,200
Fire compartmentation in the loft void (infill openings in the compartmentation found in the roof void)	£32,000
Suspended ceiling throughout the ground floor (reduces the long-term cost by placing services out of reach of vandals)	£28,000
Additional drainage works (various issues discovered in the underground system)	£28,000
Renew Soffit board to roof verges (part of the roofing works not included in the original contract)	£23,000
Cumulative effect of a number of smaller changes (various smaller items of work from furniture removals to additional power outlets)	£70,000
Allowance for UKPN direct order and some forward contingency	£27,000
<b>Total</b>	<b>£2,249,985.12</b>

Additionally the estimate for the revenue cost of furniture and equipment has risen from £60k to £70k owing to the passage of time and inflation.

Simultaneously the cost of temporary housing provision has also escalated. Officers have reviewed the business case and propose that it remains financially advantageous to complete the project notwithstanding the increase in costs. A rate of return of 12% and pay-back of eight years are indicated.

The project team will continue to seek ways in which to reduce the overall expenditure, but delay on the part of the authority at this stage is costly both in terms of contract payments for delay and the delay in realising the cost savings that are the driver for the project overall. The result of these factors is that it is important to keep the project moving at the same time as seeking ways to manage the additional costs.

The project is currently scheduled to complete on 15 August 2024, subject to UKPN installing the new electricity supply on schedule.

it is proposed that Cabinet continues to support the Spendells House site being retained and reconfigured for the provision of temporary housing accommodation

### PREVIOUS RELEVANT DECISIONS

## APPENDIX A

<u>Spendells House - Appointment of Contractor ref: 11649</u>	01/08/2023
<u>Update on Spendells House and further review of budget ref: 11622</u>	21/07/2023
<u>Update on Spendells House and Review of Budget ref: 11505</u>	13/06/2023
<u>Future use of Spendells House, Walton-on-the-Naze - Approval of financial business case</u>	03/05/2023
<a href="#"><u>Full Council allocated funding for the project as part of the HRA budget setting process</u></a>	14/02/23
<u>Cabinet Members' Items - Report of the Housing Portfolio Holder - A.4 - Update on Spendells House and review of budgetref: 10504</u>	16/12/2022
<u>Spendells House - Review of budget position and award of contract</u>	23/09/2022
<u>Future Use of Spendells House, Walton-on-the-Naze Cabinet - A.5 – minute no. 25</u>	26/06/ 2020
<u>Cabinet Members' Items - Report of the Housing Portfolio Holder - A.2 - The Closure of two Sheltered Housing Schemes</u>	23/03/2018
<u>Matters Referred to the Cabinet by a Committee - Reference from the Service Development and Delivery Committee - A.3 - Honeycroft and Spendells Sheltered Housing Schemes Review</u>	16/02/2018
<u>Reference from Service Development and Delivery Committee - Honeycroft and Spendells</u>	26/01/2018
<u>Waiver normal processes for allocating secure tenancies to enable the displaced and transferred tenants of Spendells House, Walton to be granted secure tenancies at alternative different addresses</u>	15/01/2018
<u>Cabinet Members' Items - Report of the Housing Portfolio Holder - A.16 - Formal Consultation on the future of two Sheltered Housing Schemes</u>	10/11/2017
<b>BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL</b>	
None	

<b>APPENDICES</b>
None

<b>REPORT CONTACT OFFICER(S)</b>	
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## CABINET

24 MAY 2024

### ADDENDUM TO REPORT A.6 - FURTHER UPDATE ON SPENDELLS HOUSE AND REVIEW OF BUDGET AND REFERENCE UNDER SECTION 5 OF THE LOCAL GOVERNMENT AND HOUSING ACT 1989

#### COMMENTS OF THE ASSISTANT DIRECTOR FINANCE AND IT & SECTION 151 OFFICER

*The main report (Item A.6) references that the Section 151 officer had not been able to provide comments within the timeline allowed for the report and a further written update will be provided in advance of the meeting as a published addendum report considering the financial implications and other matters arising within their remit. This report is therefore the addendum report referred to.*

#### INTRODUCTION AND BACKGROUND

The issues set out in the main report emerged during Q4 2023/24 and was referenced within the financial performance report that was considered by Cabinet on 19 April 2024.

Since the issue emerged, the Council's Senior Management Team / Leader and Housing and Planning Portfolio Holder have been working with the Service to better understand the situation and the level of potential overspending / unauthorised expenditure.

Given the wider financial risks, such as the consequences of potentially suspending the on-going refurbishment works, and as the scale of the issue has only recently been established as part of the 2023/24 outturn review, the project continuing in the interim period was acknowledged.

The report considered by Cabinet in April referred to above indicated that the matter would be revisited as part of finalising the outturn report for 2023/24. However, the work associated with finalising the outturn position for 2023/24 has now been completed and given the scale of the issue, a separate report is being presented to this meeting of Cabinet rather than wait for the wider outturn report to be presented to Cabinet in July to ensure the matter can be addressed as timely as possible.

In terms of the background and the most up to date position, it is helpful to first summarise the key financial elements set against the overall scheme budget, which in turn underpins the further commentary set out later in this addendum report:

## APPENDIX B

<b>A. Approved Scheme Budget</b>	£1,477,700
B. Actual Expenditure to the 31 March 2024	£1,234,867
C. Balance of the value of 'binding' instructions issued to contractor to date	£629,368.12
<b>D. Total spent to date @ 21 May 2024 (including value of instructions given to contractors)</b>	£1,864,235.12
<b>E. Unauthorised Expenditure (D minus A)</b>	<b>£386,535.12</b>
F. Estimated Further expenditure to complete the project (including further potential instructions not yet given to contractor / external providers)	<b>£388,465</b>
G. Contingency	<b>£75,000</b>
H. Additional Estimated Furniture Cost	<b>£10,000</b>
<b>I. Total Revised Scheme Cost (D+F+G+H)</b>	<b>£2,337,700*</b>
<b>Total Additional budget required to complete the Project (I minus A)</b>	<b>£860,000</b>

\*Differs to the figure of £2.249m within the main report as includes furniture costs and earlier budget adjustment initially omitted.

In addition to the above it is also worth highlighting the associated key elements of Financial Procedure Rules included within the Council's Constitution relating to incurring expenditure and budget management as follows: *[key elements highlighted in blue]*

### **Part 5.46 Para 7.2 (Financial Management of the Budgets During the Year)**

Responsibility for the control of capital and revenue expenditure (including the award of grants) and income for a service or function shall rest with the appropriate Head of Department. **Each Head of Department shall notify the Chief Financial Officer of any actual or prospective overspending of expenditure or shortfall in income in excess of the budget which cannot be met by virement as set out in these Financial Procedure Rules.**

### **Part 5.50 Para 9.5.4 (Certificate and Payment of Invoices)**

Before certifying an invoice the certifying officer must be satisfied, within the tolerances specified by the Chief Financial Officer, that:

- (a) The invoice confirms with the official order

## APPENDIX B

- (b) That the goods have been received, examined and approved for quality and quantity and that any services have been rendered or any work done satisfactorily and receipted on the approved ordering system
- (c) That the prices charged are correct
- (d) That the expenditure is, to the best of the certifying officer's belief, lawful and has been duly authorised.
- (e) That no invoice for the same goods, service or work has previously been passed for payment
- (f) The invoice is arithmetically correct
- (g) That the expenditure has been properly analysed to the appropriate accounting code(s)
- (h) That the allocation of VAT has been correctly made
- (i) That the expenditure can be financed from within the appropriate approved estimate.

### **Part 5.38 Para 5 (Authority to Incur Expenditure)**

In relation to all expenditure both revenue and capital, however funded, and in accordance with delegated powers an approved scheme is one where there is:-

- (a) Provision of a service consistent with an historic nature and level that is, and has in prior years, been specifically allocated and defined within the ongoing base Budget;
- (b) Any change to a service set out in (a) above where the appropriate authority to the change has been obtained in accordance with delegated powers;
- (c) Otherwise, a scheme that has the necessary approval from Council, Cabinet, Portfolio Holder or Officer in accordance with delegated powers.

For any expenditure to be incurred the necessary budget must also be in place. Where the necessary budget is not in place then amendments to the budget agreed by Council can only be made in accordance with section 6.

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### **KEY ISSUES**

Set against the background above and the information set out in the main report, the following provides further commentary / observations on the associated issues.

#### **Internal Controls and Governance**

There are two key internal control / governance elements associated with the issues raised in the main report and it is important to deal with them separately as follows:

1. **Expenditure / Legally Binding Instructions given without the necessary budget being in place.**

## APPENDIX B

In respect of the situation set out in the main report, the key 'trigger' point is the instructions given to the contractor that legally bound the Council to the associated expenditure that led to the existing budget being exceeded by **£387k** as highlighted in the earlier table. Although the reason for giving instructions to contractors as set in the main report is acknowledged (i.e. to prevent the project from stalling) these instructions were given in contravention of the existing internal controls highlighted earlier.

For completeness:

- a) The Chief Finance Officer was not notified of prospective overspending; and
- b) the necessary checks that the binding commitments made could be met from within the approved estimate and therefore the necessary budget was in place before expenditure was incurred were not undertaken.

It is also understood that the instructions were given to the contractor verbally and were later confirmed in writing. In terms of the written confirmation, the majority of these do not include any pricing information, although many refer to attached quotations or email confirmations which have not yet been seen. Further clarity is therefore required as to how the variation orders and financial aspects of the project are being managed. At the present time it is accepted that the instructions given to date are legally binding as confirmed by the Service.

Although the risks to the Council are inherently bound to individual Officers following existing internal control arrangements, it is acknowledged that this can be strengthened and be proportionate to the level of expenditure involved. In terms of providing additional assurance around this issue, especially in light of the major projects the Council has already commenced or will be commencing later in the year (e.g. LUF/ CRP), further actions are set out later on in this report.

### **2. The Cost of the Project Significantly Escalating Beyond the Existing Budget**

This is broadly addressed in the main report, which also sets out a number of helpful measures that the Service are putting in place. The main report also acknowledges that although some of the additional works were unforeseeable when the specification was written, some items were erroneously omitted.

The direct actions of the Service will be complemented by the on-going work of Internal Audit highlighted within the main report along with additional proposed actions set out later on in this addendum report.

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### **The Scheme and the Proposal to Continue**

In terms of other elements of the main report such as the recommendation to continue to deliver the scheme and the proposed funding approach, some additional observations / comments are as follows:

#### **Value for Money**



## APPENDIX B

The main body of the report sets out a value for money case for continuing the project and includes a helpful comparison with the risks associated with potentially ceasing the project.

It is also important to highlight that the Council can take a long term view. With this in mind, the demand for temporary accommodation is expected to remain high in the medium to long term and set against the expected continuing shortfall in alternative / cheaper temporary accommodation, the project is still anticipated to provide value for money over its life, which includes providing more suitable accommodation for families instead of using hotels and B&B's.

It is acknowledged that there is still a risk that the above factors could change that may result in significant void periods within Spendells House. Although this is a risk that must be taken into account in making the decision, there is no evidence at the present time that suggests that the demand for temporary accommodation will reduce or that there will be an increase in the supply of cheaper accommodation within the district in the foreseeable future.

In taking a pragmatic view, the total spent / contractually committed expenditure to date is **£1.864m** as highlighted in the table above, which therefore has to be met regardless of the consideration of potential alternative options. An additional **£473k** is required to complete the project (including contingency and additional furniture costs), which is therefore the underlying consideration as to whether to continue to project or not rather than necessarily revisiting the previous business plan. As set out in the main report, alternative options have all been given an indicative estimate by the Service at a price in excess of this sum, which supports the decision to continue with the project.

### **Use of HRA Reserves to Fund the Additional Costs**

The main report sets out the pragmatic approach of using HRA Reserves to fund the additional required budget of **£860k**. The current estimated HRA Reserve at the end of March 2024 totals **£3.350m**. This would therefore reduce to **£2.490m** after meeting this additional cost. This clearly puts pressure on the remaining balance in the context of supporting the ongoing delivery of a sustainable HRA in the medium to long term and the potential opportunity cost impacts. However, given the urgency of the decision, it would be appropriate to use the HRA Reserve, although this will remain under review during the remainder of the year where it may be possible to apply a more advantageous mix of funding including the use of capital receipts or refocusing existing capital and/or revenue budgets. If such a change was to be made, it would be subject to a separate decision as necessary.

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### **Other Matters**

The main report states the following:

*In light of this increase in costs, it is impossible to confirm that the financial appraisal / business case that was set out within the original report to Cabinet in June 2020 to determine if value for money can*

## APPENDIX B

*still be reasonably demonstrated owing to the potential for changing circumstances during an elongated pay-back period.*

This could be seen as contradictory to other comments elsewhere within the main report that suggest that the business case has been reviewed and it remains advantageous to continue the project through to completion.

With the above in mind, the key value for money considerations have been set out in the main report and earlier in this addendum report which broadly take into account the key financial risks that the Council now faces rather than a reliance on a revised detailed business case. It is therefore important to repeat an earlier point that the Council can take a long term view and given there is no current evidence that the demand for temporary accommodation will reduce or conversely that the supply of cheaper alternative temporary accommodation will increase, the continuation of the Spendells House project is still expected to provide value for money in the long term as well as providing more suitable accommodation for families within the local area. This is especially important when compared with the alternative options that have all been estimated by the Service as potentially being more expensive.

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### **CONCLUSIONS AND PROPOSED ACTIONS**

The main report sets out a pragmatic approach that seeks to regularise the budget / unauthorised expenditure issue as timely as possible along with recommending the continuation of the Spendells House project. The latter point being based on a number of value for money considerations including the comparison with alternative options such as ceasing the project. The issue that has been identified is therefore not about the value or the need to undertake the project but about the governance arrangements required as part of the Council's budget framework. As highlighted earlier the main report also sets out a number of useful changes to internal practices and processes that the Service are seeking to implement directly.

This issue has been discussed informally with the Council's External Auditor and it should be seen as a significant value for money / governance issue for the Council that will be reflected in their associated value for money commentary that will be provided during 2024.

It is also a significant reputational issue for the Council, especially in light of the major projects the Council has already commenced or will be commencing shortly such as the various Levelling Up Projects. Going forward, the Council will need to undertake the necessary actions / steps to provide adequate assurance around the management of budgets and delivering value for money both internally and to our external partners. This will include ensuring that officers who authorise invoices / give legally binding instructions to service providers and contractors on behalf of the Council are at an appropriate senior level and that they clearly understand the Council's financial procedure rules. This must also be complemented by regular reviews at Director / Assistant Director Level along with regular reconciliations to the Council's primary financial systems to reduce the inherent risks of using secondary information when managing projects via spreadsheets or other similar approaches.

## APPENDIX B

Following the main report being published, there have been ongoing discussions involving the Chief Executive, Monitoring Officer, S151 Officer and Head of Internal Audit, and as initial first steps, the Chief Executive:

- a) Has instructed that a formal review to be undertaken to provide further clarity on how the issue arose and developed (including the governance arrangements associated with issuing verbal orders), which in turn can inform any further actions along with informing decision making and project delivery in the future;
- b) is finalising a directive to all Senior Managers relating to financial and budget management, which explains the consequences and expectations of them in their roles and will be supported by further collective meetings with Senior Officers over the coming weeks / months; and
- c) has commenced arrangements for the implementation of a Senior Officer Project 'Board' that in turn will report directly to the Council's Senior Management Team on a regular basis.

Once the review set out in a) above has been concluded, further actions may emerge which will be implemented as necessary along with the outcome being reported to Members accordingly.

In terms of successfully completing the Spendells House project within the proposed revised budget, the following commitment by the Service that is set out in the main body of the report is noted:

*The construction of the project is substantially under way and officers consider that it is unlikely that any further unknown issues will be uncovered. The project team will continue to seek ways in which to reduce the overall expenditure.*

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**In light of the above, the following ADDITIONAL RECOMMENDATIONS to those set out in the main report (Item A.6) are proposed:**

**“That Cabinet:**

- (h) notes and endorses the instructions and actions of the Chief Executive as set out within the Addendum Report;**
- (I) subject to h) above, requests that Officers provide an update against the instructions and actions taken by the Chief Executive as soon as practicable; and**
- (J) acknowledges the potential alternative to using HRA Reserves highlighted within the Addendum Report and requests that the S151 Officer keeps the options under review during the year and reports back to Cabinet as necessary.”**

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## Minute Extract from the Cabinet meeting on 24 April 2024 – Appendix C

### 13. CABINET MEMBERS' ITEMS - REPORT OF THE HOUSING & PLANNING PORTFOLIO HOLDER - A.6 - FURTHER UPDATE ON SPENDELLS HOUSE AND REVIEW OF BUDGET AND REFERENCE UNDER SECTION 5 OF THE LOCAL GOVERNMENT AND HOUSING ACT 1989

Cabinet considered a joint report of the Housing & Planning Portfolio Holder and the Monitoring Officer (A.6), which:-

- 1) updated it on progress with Spendells House being retained and reconfigured for the provision of temporary housing accommodation;
- 2) sought its continued support for the project in the light of the options available and the ongoing need for the accommodation;
- 3) sought additional funding for additional work to address matters that were not within the specification and were brought to light in the course of the project; and
- 4) informed Members of a breach of the Council's Financial Procedure Rules and legal decision making requirements with regard to variation of a contract without sufficient approvals in place and the actions taken in response thereto.

Cabinet noted that the Monitoring Officer was a co-author of the Report, only in so far as complying with the Section 5A of the Local Government and Housing Act 1989 obligations.

#### Background to bringing in new temporary accommodation to support the District's homelessness challenge

Spendells House was a 1960s constructed sheltered housing scheme with shared washing facilities and limited living space by modern standards. By 2017 the scheme was under occupied, hard to let and suffering from a number of repair and maintenance difficulties. At the same time the Council was (and still is) experiencing high and increasing demand to provide temporary housing for homeless people. At national level it was reported that homelessness had increased by around 13%. That demand had substantially exceeded the available accommodation in the stock and had resulted in the block booking of hotel rooms.

Hotel rooms were costly and were unsuited to decent family accommodation for daily life. Cooking and laundry facilities were rare and hotel occupancy policies were not well suited to family life.

Cabinet received a timeline of events as follows:-

*On 10 November 2017, Cabinet had received the report of the then Housing Portfolio Holder and had approved formal consultation on the future of two Sheltered Housing Schemes including Spendells House;*

*On 15 January 2018, Cabinet had agreed to waiver normal processes for allocating secure tenancies to enable the displaced and transferred tenants of Spendells House, Walton to be granted secure tenancies at alternative addresses;*

*On 15 January 2018, the former Service Development and Delivery Committee had considered the future of the Honeycroft and Spendells sheltered schemes and had supported the principle of closure of the schemes, subject to some supplementary recommendations;*

*On 16 February 2018, Cabinet considered the reference from the Service Development and Delivery Committee on the consideration of the future of the Honeycroft and Spendells Sheltered Housing Schemes. Cabinet had noted their recommendations and had welcomed the Committee's support;*

*On 23 March 2018, Cabinet had received the report of the then Housing Portfolio Holder and had decided on the closure of the two Sheltered Housing Schemes;*

*On 26 June 2020, Cabinet had decided to bring Spendells House back into use as temporary accommodation;*

*Officers arranged for the site to be stripped internally of all asbestos and a specification and a formal procurement process had been completed in accordance with the Council's Rules of Procedure and the lowest tender returned was in the sum of: £1.25m;*

*On 23 September 2022, a further decision by the then Cabinet had been proposed in order to consider a report on the review of the budget position and the award of contract agreed;*

*On 16 December 2022, the then Cabinet had considered a report on the review of budget position and award of contract and had agreed to continue to support the project subject to decision of the full Council to allocate a revised budget;*

*On 14 February 2023, the Full Council had decided to allocate additional funding for the project as part of the HRA budget setting process;*

*The project had faced cost increases before commencement on site due to national construction inflation.*

*On 3 March 2023, a proposal for further decision on the future use of Spendells House, Walton-on-the-Naze - Approval of financial business case had been published.*

*On 13 June 2023, the Housing & Planning Portfolio Holder, Leader of the Council & Corporate Finance & Governance Portfolio Holder had considered an update on Spendells House and Review of Budget. The Leader and Portfolio Holder had noted the increased costs, to be financed through capital receipts, had noted the updated business case and had confirmed support for the project;*

*Renewed engagement with the lowest tenderer had highlighted that since the submission of tenders costs had increased through inflation and that an additional £0.077m would be needed if the scheme were to be progressed.*

*On 21 July 2023, the Housing & Planning Portfolio Holder, Leader of the Council & Corporate Finance & Governance Portfolio Holder had considered a further update on Spendells House and a further review of budget and had agreed to continue with the project proposing to finance additional costs by reallocating money from within the HRA capital programme;*

*On 1 August 2023, the Corporate Director, in consultation with the Portfolio Holder for Housing & Planning had decided to appoint ARC to complete the work and to authorise the Head of Legal Services to enter into the construction contract;*

*Work on site had started on 16 October 2023.*

*Additional works were required beyond the original specification and implementing them also caused delays, both of which had further increased costs. During construction the need for additional work on a number of matters had arisen including:-*

- 1) *Fire compartmentation was incomplete above ceiling level and additional partitioning is required in order to limit potential fire spread in the roof void.* Issue had been discovered after the start of the works when the contractor had accessed the loft space;
- 2) *The electrical supply was found to be inadequate for the new electrical heating system and it was necessary to seek advice and quotation from the utility company which took some time to secure.* Specific analysis carried out by the electrical contractor followed by advice from the utility company on their infrastructure capacity;
- 3) *Water supply pipework was found to have a number of dead legs and sizing issues in relation to the new sprinkler system. Water heating to the laundry and shower areas had to be added to the works.* Partly caused by updated regulations but also erroneously not included in the outgoing specification;
- 4) *Drainage at the site was discovered to be broken and defective in some locations and in need of repair works.* Issues had been discovered once the areas were opened up by the contractor;
- 5) *Flat entrance doors and their fanlights and side screens were identified as not being fire rated.* An issue not recognised in the design stages;
- 6) *Flushing in of wiring and ground floor suspended ceilings were added in order to reduce long term risk of damage to services that would otherwise have been surface mounted.*  
Late change by the project team aimed at reducing long-term costs;
- 7) *A balcony area at the rear of the building was found to have a defective roof covering and it was proposed to replace the area with a section of sloping roof to match the remainder of the building.* Late change by the project team aimed at reducing long term costs.

Those additional works had been not included within the original specification, for the various reasons identified above and therefore had not been priced for as part of the successful tender. Accordingly, instructions for various additional works had been issued at a total estimated cost in the order of £0.525m. The financial effect of delays to the contract building up as a result of the additional work itself and awaiting the conclusions of the utility provider had amounts to an estimated £0.17m.

It was estimated that the final cost of the main contract would now amount to £2.1m, representing an increase in the contract sum of £0.77m, together with the previous expenditure of £0.149m and the inflationary effect on the contract before acceptance of £0.077m, amounted to a total cost of £2.25m. Additionally, the estimate for the revenue cost of furniture and equipment had risen from £60k to £70k owing to the passage of time and inflation. The financial effect of those instructions issued was to increase the cost of the project beyond the authority granted and the budget established.

#### The Council has to take a value for money decision on the project now

Simultaneously the cost of temporary housing provision had also escalated. The Council had a choice of whether to continue with the contract, increasing funding and confirming the additional works identified or negotiating an end to the contract and then either to discontinue the project or seek a further contractor to complete the project. It was the view of Officers that a negotiated termination of the contract would be costly, a cheaper completion of remaining work could not be predicted and design and procurement timescales would incur property holding costs and an opportunity cost in terms of delayed opening of the accommodation and the cost savings that it was intended to deliver.

The primary purpose of the scheme was to provide accommodation for homeless people and families. The financial cost of hotel provision to meet those needs was unaffordable in the long term. There was also a social value to better local provision: keeping local people in their area, with their schools, jobs, support networks and family support.

Having got to this point the best value option from here was to continue with the project and the current contract.

It was proposed that Cabinet continued to support the Spendells House site being retained and reconfigured for the provision of temporary housing accommodation

It was proposed that an additional £0.850m capital and £0.01m revenue was allocated from reserves to facilitate the completion of the project.

Some of the additional project costs were incurred without proper authorisation.

The Council's financial procedure rules had not been followed by the project team by the seeking of funding for the variations before commitments were made to the contractor. Accordingly, instructions had been given for which there was no authority and no budget.

This was a report issued under Section 5 of the Local Government and Housing Act 1989 to inform Members that Tendring District Council, had through contract management, varied the contract works beyond the scope of the approvals in place, through previous decision making and sufficient budget provision. The Council was required by law to consider this report and decide what action (if any) to take in response.

The Chief Executive and the Assistant Director (Finance & IT) & Section 151 Officer had both been consulted on this report, as required by the legislation.

The Portfolio Holder and the Management Team, in particular the Monitoring Officer and the Section 151 Officer, had raised significant concerns with the project team. The project team had acknowledged that in order to limit the stalling of the project Officers had given instructions to the contractor to proceed with works, which would lead to the final cost substantially exceeding the contract sum and the approved budget without the relevant approvals in place.

As a result the Council has reviewed its implementation of financial controls

The Internal Audit Team had been asked to look at the Council's arrangements for project management including any learning that should be embedded in relation to the Spendells conversion. The Audit team's report would be completed in the future. Notwithstanding that, there were some interim measures that Officers proposed to implement directly namely:-

- *Take a more measured and realistic approach to internal resources: Seek consultancy leadership in the delivery of major projects and factor those costs in from the start.*
- *Implement project review points in the development stages to ensure scope is not stretched and that financial review forms part of change processes.*
- *Ensure that realistic contingencies are included in all contracts and that realistic timelines are established at the early stages.*
- *Implement short term in-house development for staff in contract and project management.*
- *Identify appropriate staff to take part in formal project management training and potentially qualification.*
- *Include the importance of budgetary control and governance in one to one reviews.*
- *Hold monthly finance meetings between service and finance staff and formalise project review into monthly Portfolio Holder meeting agendas.*

The costs and timeline of this project had increased substantially. There were a number of areas of learning to be drawn out of events. However, the fundamental reasons for commencing remain valid i.e.

- *Accommodating homeless people in more suitable facilities*



- *Reusing a redundant building*
- *Revenue cost saving*

Cabinet also considered an addendum report, which provided it with the formal written comments of the Council's statutory Section 151 Officer on this matter. Those comments, *inter alia*, provided a commentary on the following issues:-

- (a) Internal Controls and Governance;
- (b) Value for Money considerations;
- (c) Use of HRA Reserves to fund the additional costs; and
- (d) Conclusions and proposed actions.

In order to:-

- (1) progress the provision of council owned and managed temporary housing accommodation;
- (2) formally receive the Section 5 report from the Council's Monitoring Officer and to consider its contents and Cabinet's response thereto;
- (3) gain the approval required for the contractual instructions and budget allocation, as variation orders had already been issued for the additional works, which were necessary to complete the project;
- (4) mitigate the reputational risk associated with this decision, as the Council has not followed its governance arrangements in this instance all managers would be formally written to reminding them of the seriousness of over-expenditure and committing to unfunded expenditure. Managers were also to be reminded of the robust internal controls in place and the absolute need to follow them in order to ensure that this event does not occur again.

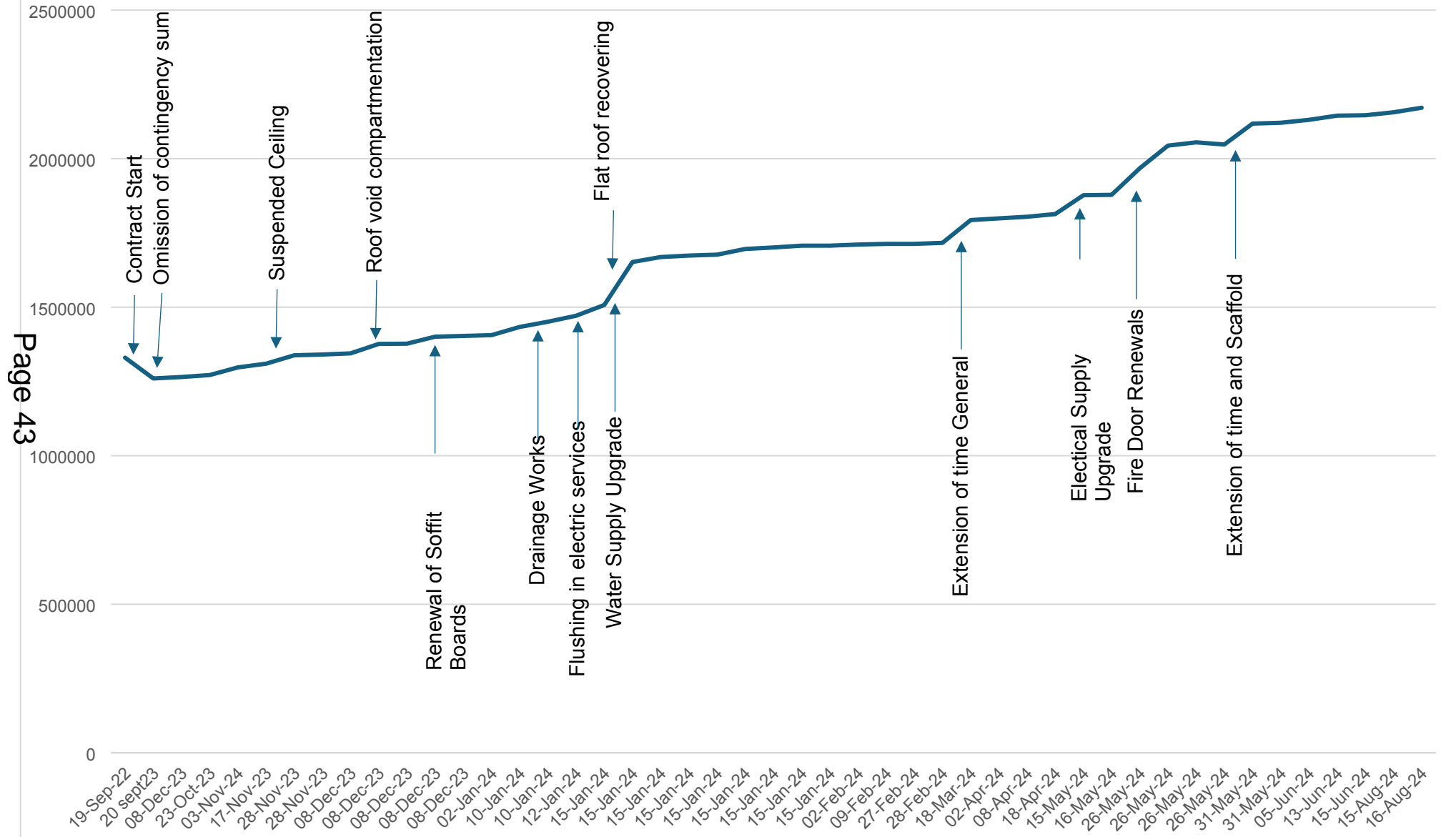
It was moved by Councillor Baker, seconded by Councillor M E Stephenson and:-

**RESOLVED** that Cabinet –

- a) formally receives the Monitoring Officer's report and in response, notes the update on progress, increased contractual costs and additional budgets required to complete the project;
- b) continues to support, acknowledging the risks highlighted, the principle of the Spendells house site being retained and reconfigured for the provision of temporary housing accommodation;
- c) notes the financial implications incurred but that the most cost effective route forward is to complete the scheme and the contract in place;
- d) allocates an additional £0.850m capital and £0.01m revenue from reserves to facilitate the completion of the project;
- e) authorises the additional contractual works to be undertaken and recorded through contract management, as set out in the report (A.6);
- f) acknowledges that managers have been reminded of the internal control arrangements in place and the need for these to be followed in order to ensure such contract instructions are not proceeded with in future without the necessary approvals in place;
- g) requests that the Portfolio Holder for Housing and Planning provides corporate oversight of the completion of the project within the approvals in place;
- h) notes and endorses the instructions and actions of the Chief Executive, as set out within the Addendum Report;
- i) requests that Officers provide an update against the instructions and actions taken by the Chief Executive as soon as practicable; and

- j) acknowledges the potential alternative to using HRA Reserves highlighted within the Addendum Report and requests that the Section 151 Officer keeps the options under review during the year and reports back to Cabinet as necessary.

### Spendells Contract Value Timeline



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