

# Executive Decision Report

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## **Building Safety Fund | Phoenix Square Cladding**

Decision to be taken by: City Mayor

Decision to be taken on: 10 March 2023

Lead director: Matthew Wallace

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**City Mayor**

## Useful information

- Ward(s) affected: Castle
- Report author: Sam Law, Tom Lo'Monte
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- Report version number: v7

### 1. Summary

The purpose of this report is to provide details of the fire safety of non-ACM cladding at the Council-owned Phoenix Square complex, Leicester, and Building Safety Fund progress.

The construction project is for the removal and replacement of insulated render systems, timber cladding and brickwork façades, following the successful securing of funding from the Government's Building Safety Fund.

### 2. Recommendations

The Executive is recommended to:

Approve the addition of £9,993k to the Capital Programme funded from the Building Safety Fund grant, to remediate the entirety of the Phoenix Square building.

### 3. Supporting information including options considered:

#### Background Information

The Independent Review of Building Regulations and Fire Safety was announced by government in July 2017 following the Grenfell Tower tragedy and was led by Dame Judith Hackitt. On the 26th of May 2020, the government announced a £1bn Building Safety Fund (BSF). This fund was to meet the cost for remediation of unsafe non-ACM (Aluminium Composite Material) cladding systems on residential buildings in the private and social sector that are 18 metres and over, and do not comply with current Building Regulations.

Pre-tender support funds of £562k was successfully awarded in April 2021. These funds allowed the commissioning of Willmott Dixon Construction's (WDC's) design team from RIBA stages 0 to 4. EBS continue to provide full-time internal Project Management and Quantity Surveying services on the project.

Leicester City Council submitted an Appeal to the BSF on 30.06.2021. The Appeal was to request for funds to remediate not just the render and timber cladding, but also the brickwork façades. The justification is to ensure that the building achieves the optimum Fire Classification upon completion of the works. On the 16.12.2021 the

BSF Appeals team announced their landmark decision which meant LCC could apply for funding to remediate the whole building: timber, render and all brickwork façades.

A BSF Stage 2 funding application to remediate the whole building was submitted online on the 31<sup>st</sup> of January 2022 (£9,992,827 + VAT), this includes the pre-tender award sum of £562k.

WDC constructed and completed Phoenix Square building in 2009, to the then current Building Regulations, and are acquainted with the construction method and materials used. Remedial works are therefore required for penetrating into the current building's existing façade, to facilitate Phase 2 of the built asset expansion programme. Internal approvals to date as follows:

- HRBC for Willmott Dixon (WDC) feasibility fees: Divisional Director approval 10.11.20.
- PRF for WDC works package signed 10.03.21. Request to direct award works to Wilmott Dixon under an NEC4 form of contract through the SCAPE Framework. Agreed in principle with Procurement Manager on 30/09/2020.
- WDC instructed to begin pre-works design support through signed PCSA using the SCAPE Framework. Signed off and agreed through FEW0989 / PAN2613.

BSF requested an independent cost consultant to assess and support the financial inputs into the LCC works package. Capital Projects Team were given permission to run a targeted quotation exercise by Hussain Dakri (Procurement Manager G&S) on 10th May 2021 and PAN2604 was allocated to this. Following a successful tender period, RG+P were awarded this package and forensically analysed the WDC tender submission to ensure value for money. In addition, BSF allocated an Independent Cost Consultant, Catherine Thompson (Cushman & Wakefield) also to audit the tender submission. The resulting audit resulted in an agreed project sum of £9.93m with a works package of £8.9m. Further discussion with WDC identified benefits towards using a JCT D&B contract for the works package for the following reasons:

- It mirrors the intent of the original contract which was a JCT D&B contract and remedial works should be undertaken on the same basis
- It's better suited for this type of remedial work and is for the benefit of the project
- It allows design risk to sit with WDC and for WDC to take on full design liability better than the NEC

Following the BSF award in August 2022, WDC revisited the tender submission and revised their initial January 2022 submission to account for inflation and market change.

We are seeking an addition to the capital programme equal to the currently agreed grant amount (£9.993m) and will proceed to enter contract with Wilmott Dixon once negotiations to reduce the contract sum to this level have been completed.

WDC have recently completed works to the adjoining Phoenix Arts Centre in December 2022 for the Shell and Core works. In order to provide the most efficient project handover, the target start date for the cladding works is presently scheduled in to be June 2023.

Under the Building Safety Act, building owners and landlords are responsible for making buildings safe and the first port of call to fund any necessary repairs. It is illegal for costs of cladding repairs and those beyond the leaseholder caps for non-cladding defects to be passed to qualifying leaseholders<sup>1</sup>. The leaseholder protections in the Building Safety Act came into force on 28 June 2022. This means qualifying leaseholders in England can no longer be charged to remove unsafe cladding systems, and there are legal protections in place for non-cladding costs<sup>2</sup>.

Any additional unforeseen costs will be recovered through the Building Safety Fund post-GFA variation mechanism submitted on the online portal. It should be noted that a comprehensive risk register has been developed and sufficient costed risk allowances are included within the awarded sum of £9.993m. This is subject to approval through the appointed third-party consultant, with the following aspects being required to ensure the validity of the variation claim: 1) firm and fixed quotation supplied by the incumbent Main Contractor, 2) the referenced total variation is included within the latest Project Cost Report and 3) the externally appointed project PM/QS carrying adequate and up to date levels of Professional Indemnity Insurance.

On the 13<sup>th</sup> of February 2023 a post-GFA variation was submitted by LCC's externally appointed consultant, to Homes England totalling £1.994m for acceptance. LCC will find out whether we are successful in approx. 6 weeks' time (April 2023) once the appointed third-party consultant to Homes England has verified and approved the claim - noting the requirements stipulated above.

In the unlikely event of being successful with the post-GFA variation process, there is a marginal risk back to the Local Authority. The authority would seek to review the existing scope and refine the contingency allowances beforehand, however, if this process was not successful the Authority will be bound to meet any costs. It has been identified in the unlikely event that this situation arises, we would seek a decision for these works to be funded from the inflation contingency allowances already identified within the capital programme.

### 3.2 – Programme

WDC target construction programme indicates a late June 2023 start on site, with an 18-month construction period. The estimated completion date March 2025. An indicative forward programme subject to the main contractor's review is detailed below:

Task name	Start Date	End Date
Grant Approval letter	11/08/2022	11/08/2022
GFA Signed	03/10/2022	31/10/2022
Revised WDC Tender submission (1)	03/10/2022	31/10/2022
Construction Contract Signed	01/11/2022	24/03/2022

<sup>1</sup> [Supporting residents who have been affected by cladding and other building safety issues | Local Government Association](#)

<sup>2</sup> [Leaseholder protections on building safety costs in England: frequently asked questions - GOV.UK \(www.gov.uk\)](#)

New WDC Tender submission (2)	16/12/2022	16/01/2023
Contractor Mobilisation	26/05/2023	09/06/2023
Construction	09/06/2023	14/02/2025
Handover	14/02/2025	07/03/2025

#### 4. Details of Scrutiny

Not applicable

#### 5. Financial, legal and other implications

##### 5.1 Financial implications

This report proposes to add £9.993m to the capital programme to remediate the cladding at Phoenix Square, to be funded by the government's Building Safety Fund.

Stuart McAvoy – Head of Finance

##### 5.2 Legal implications

The draft grant funding agreement terms provided by the Department for Levelling Up, Housing and Communities are considered reasonable and must be complied with by the Council throughout the lifetime of the agreement.

The remedial work, which the grant funding supports, must comply with all relevant legislation, including the Building Safety Act 2022, which implements many of the Independent Review of Building Regulations and Fire Safety's recommendations,

Kevin Carter – Head of Law (Commercial, Property and Planning)

##### 5.3 Climate Change and Carbon Reduction implications

There are limited climate emergency implications associated with this report, as it is not anticipated that the works will have a significant impact on overall insulation levels for the building. More generally, consideration should be given to procurement of sustainable materials as part of capital works, following the council's sustainable procurement guidelines.

Aidan Davis, Sustainability Officer, Ext 37 2284

## 5.4 Equalities Implications

When making decisions, the Council must comply with the Public Sector Equality Duty (PSED) (Equality Act 2010) by paying due regard, when carrying out their functions, to the need to eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act, to advance equality of opportunity and foster good relations between people who share a 'protected characteristic' and those who do not. In doing so, the council must consider the possible impact on those who are likely to be affected by the recommendation and their protected characteristics.

Protected Characteristics under the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

The report seeks approval of funds to remediate the cladding on the exterior of the Phoenix House complex. This is an important process that will protect residents in the buildings and will benefit people from a range of protected characteristics. Should there be any changes made to the build it is important that inclusive design principles are adhered to in any development, and this should be considered as the project develops.

Kalvaran Sandhu, Equalities Manager, ext. 6344

## 5.5 Other Implications (You will need to have considered other implications in preparing this report. Please indicate which ones apply?)

### **6. Background information and other papers:**

None

### **7. Summary of appendices:**

None

### **8. Is this a private report (If so, please indicated the reasons and state why it is not in the public interest to be dealt with publicly)?**

No

### **9. Is this a "key decision"?**

Yes

### **10. If a key decision please explain reason**

Capital expenditure of over £1m is to be committed on a scheme that has not been specifically authorised by Council.