

<b>10 January 2024</b>		<b>ITEM: 15</b> <b>Decision:110691</b>
<b>Cabinet</b>		
<b>Gas Services Contract Modification</b>		
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> Key	
<b>Report of:</b> Cllr Barry Johnson, Portfolio Holder for Housing (Cabinet Member)		
<b>Accountable Assistant Director:</b> Ewelina Sorbjan, Assistant Director of Housing and Development		
<b>Accountable Director:</b> Ian Wake, Executive Director of Adults, Housing and Health		
<b>This report is Public</b>		

### **Executive Summary**

The council has embarked upon the procurement of an all-inclusive Partnership Delivery Model for all housing repairs, planned, major works and compliance works to its housing stock. This new delivery model is planned to go live on 1 March 2025. Between now and 1 March 2025 the intention is for the council to only procure any new works contracts for a limited time period where these cannot be extended or be absorbed into other contracts within the necessary regulations.

The Domestic Gas Servicing Contract will expire on 29 March 2024. However, the council needs to maintain a gas servicing and heating works contract, in order to service and maintain its housing stock in repair and compliance.

This report is seeking approval for a contract modification to extend the contract for Domestic Gas Servicing to 1 March 2025 after when the service will be delivered as part of the new Partnership Delivery Model for Housing works. This extension falls within the parameters of Public Contract Regulations 2015 regulation 72.

This recommendation is consistent with the objectives of the Enhanced Thurrock Improvement and Recovery Plan for the council to offer value for money to its residents and for its services to be delivered in a financially sustainable manner.

### **Commissioner Commentary**

The commissioner supports the recommendations as outlined in the report.

The council has a legal duty as a landlord to ensure its tenants are provided with safe homes that are compliant with housing regulations and deliver on its housing asset management objectives. As such it is imperative that the gas servicing works contained within this report are delivered in a timely, reliable, and cost-effective manner that offers the best value to the council and its residents.

Finances for the delivery of these works have been allocated within the HRA 30 business plan.

In September 2022, directions issued to the council by the Government required Thurrock to put in place an Improvement and Recovery Plan to the satisfaction of Commissioners. The plan has 5 main themes:

- financial sustainability
- governance and scrutiny
- strategic direction
- place leadership and growth
- leadership and culture

## **1. Recommendation(s)**

- 1.1 Approve the recommendation set out in the report to modify and extend the existing domestic and commercial gas servicing, breakdown, repair and installation contract for a further year to 1st March 2025 with the potential extension for a further year.**
- 1.2 Approve delegated authority to implement the contract modification for the domestic and commercial gas servicing, breakdown and repair to the Executive Director of Adults, Housing and Health in consultation with the Leader, Portfolio Holder, Commissioners and Section 151 Officer.**

## **2. Introduction and Background**

### **Gas Services Contract**

- 2.1 The current domestic gas contract was procured and awarded in 2019 to Aaron Services following a restricted tender process in accordance with Public Contracts Regulations 2015 (PCR 2015). The contract was extended as permitted under the contract terms in 2022 for a period of two years. The contract is based on a price per property for the annual servicing and repair to all gas appliances in council housing stock.
- 2.2 The current contract is £1.2m per year comprising of servicing and repairs, installation of new boiler and central heating systems and out of scope repairs. The price per property contract covers general operating components of the boiler, however, more extensive repairs fall outside of the price per property scope and are classified as exclusions which are assessed and approved on a

case-by-case basis by the housing contract management team. Commercial gas servicing and repair services are currently split into two elements, and includes council buildings across the borough, including the Civic Offices and Thameside Complex. The commercial element of the contract is much smaller than the domestic servicing (at an annual value of £30k per annum) and is effectively delivered as part of a “one stop shop” for gas services.

- 2.3 The data below provides the number of repairs and new boiler installations that have been delivered by the contractor over the past two financial years, 2021/22 and 2022/23.

### **Gas breakdown and repair repairs and costs**

Between April 2021 to Mar 2022 – 8350 gas repairs were completed with 94% of these repairs completed at first visit.

Between April 2022 to Mar 2023, 11,333 gas repairs were completed with 93% of these repairs completed at first visit.

Between April 2023 to Sept 2023 4235 gas repairs were completed with 70.5% of these repairs completed at first visit.

(Data taken from Housing Gas Repairs Performance Dashboard)

### **Number of new gas boiler installation and costs**

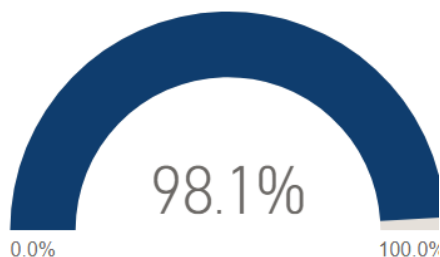
2021/22 – 498 boiler renewals were completed at a total cost of £1,057,255

2022/23 – 528 boiler renewals were completed at a total cost of £1,204,927

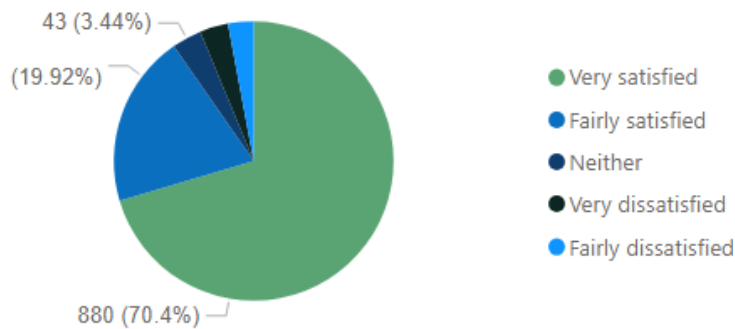
Total – 1026 boiler renewals at a total cost of £2,262,183.02

- 2.4 The customer satisfaction ratings for the contractor’s performance has been good as illustrated by the data below. Data below is from April 2022 to Sept 2023.

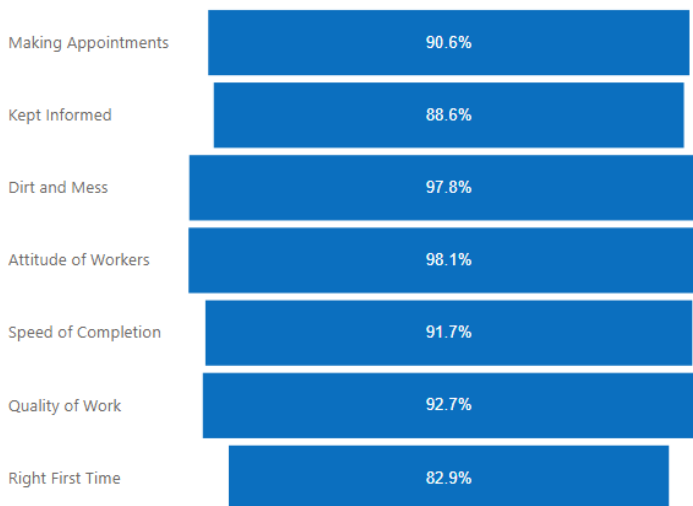
CSAT Rate - Overall Satisfaction



### Responses by Rating



### Other Satisfaction Metrics



## 3. Issues, Options and Analysis of Options

### 3.1 Gas Servicing Contract

3.2 Several options were considered to ensure there was no disruption to residents for gas servicing when the contract expires in March 2024. These options included sourcing a new supplier via a new procurement exercise; incorporating the gas servicing within the existing repairs contract; to spot purchasing any repairs, servicing and heating installations as and when required. The risks and benefits of each of these options are listed in the table below.

3.3 These options pose considerable risks to the council as any new procurement exercise could mean considerable price increases to the council from the

market given the short contract term. There could also be the considerable risk of service disruption during the mobilisation period for any new supplier.

- 3.4 With all of these risk factors considered the recommended option is to modify the existing contract with the existing supplier, Aaron Services, for a period of one year to last up to when the new Partnership Delivery Model for housing works takes over from 1<sup>st</sup> March 2025. This recommendation poses the least risk of service disruption to tenants whilst at the same time ensuring cost certainty to the council as prices will remain as per current scheduled rates.
- 3.5 The modification to the existing contract is to be pursued under Regulation 72 of the Public Contracts Regulations (PCR) 2015, which a contract can be amended after award without the need to re-advertise in OJEU. Regulation 72 describes a number of changes that can be made to awarded public contracts without triggering a requirement to conduct a fresh tender process. Importantly, a change proposed by a contracting authority will only need to satisfy one of a number of tests in order to not be deemed material. Please see para 7.2 of this report for further detail on Regulation 7.2.

### Options Appraisal

Gas Servicing Contract		
Option	Benefits	Disadvantage
Do nothing – this option is not recommended.	There are no benefits to this option	This option would not deliver the council's legal duties as a landlord. This option is discounted.
Outsourced procurement via recognised specialist Framework - this option is not recommended.	Competitive process.	Limited contract period will attract low response from the market. Limited value for money to the council due to short contract period. Procurement process and mobilisation period for any new supplier will pose a risk of service disruption. Limited or no opportunities for social value.
Spot purchasing / Procure works on a job by job basis – this option is not recommended.		Given the volume of works required this option will not deliver any cost efficiencies or consistent service standards. Spot purchasing will pose significant procurement challenges given the volume of works required. This is not

		deemed a viable option and discounted.
Direct delivery in-sourced service approach - this option is not recommended.	Direct control over delivery of service.	The time to set up a direct delivery service will pose a significant risk of service disruption and subsequent failure to meet landlord duties. The costs of setting up an in-house service along with all ancillary support logistics will be very significant and these costs are not currently budgeted for. This option does not align with the Enhanced Improvement & Recovery Plan for the council to become an enabling and commissioning organisation.
Modify/Extend Existing Contract - <b>This option is recommended.</b>	Ensures continuity of service. Requires no contractor mobilisation period. Ensure cost certainty to the council as prices will remain as per current scheduled rates.	There is a low risk of challenge to this option as the council has already utilised extension provisions in the contract. The risk of a challenge is low/moderate as the modification/extension period is for eleven months and interest from the market would be very limited for such a short period.

#### 4. Reasons for Recommendation

- 4.1 The council has a legal duty as a landlord to ensure its tenants are provided with safe homes that are compliant with housing regulations and deliver on its housing asset management objectives. As such it is imperative that the gas servicing works are delivered in a timely, reliable, and cost-effective manner that offers the best value to the council and its residents.
- 4.2 The existing contract expires on 29<sup>th</sup> March 2024. Options available to the council are to re-procure this contract, amalgamate this service with another contract or extend the existing contract. Due to current market conditions leading to significantly increased prices; the risk of service disruption and the performance of the existing contractor (Aaron Services) worsening, the recommendation is to modify and extend the existing contract to 1<sup>st</sup> March 2025 after when the gas servicing and heating works would become part of the new Partnership Delivery Model which the council intends to procure from the market from 14<sup>th</sup> Dec 2023.

## **5. Consultation (including Overview and Scrutiny, if applicable)**

- 5.1 Options within this report have been discussed with Portfolio Holder for Housing. Wider housing and corporate estate colleagues have been briefed on the impending contract procurements to ensure a one council approach.
- 5.2 As this report pertains to a contract modification of an existing service this report has not been presented to Housing Overview and Scrutiny Committee.

## **6. Impact on corporate policies, priorities, performance and community impact**

- 6.1 The recommendations of this report align with Thurrock's Enhanced Improvement and Recovery Plan 2022 to be a financially sustainable organisation offering best value to its residents.
- 6.2 The recommendations within this report will align with the strategic them of the Enhanced IRP to be a focussed, cost-effective, sustainable and co-designed approach to service provision which is delivered in partnership with residents and other key partners, with collaboration across multi-disciplinary teams.

## **7. Implications**

### **7.1 Financial**

Implications verified by: **Mike Jones**  
**Strategic Lead – Corporate Finance**

The contract detailed within this report relates to the Housing Revenue Account. There is no impact on the council's General Fund

The budget provision within the HRA for costs pertaining to the gas contract for 2023/24 is £1.303m. This is sufficient to cover the estimated costs of the contract.

The total expenditure in relation to the works in the previous two financial years equated to £1.132m in 2021/22, and £1.235m in 2022/23.

The cost of the contract modification will form part for of the 2024/25 HRA budget setting process. This will include an inflationary element of 6.7% on the 2023/24 budget provision, giving a total budget provision of £1.390m.

Any major works in the replacement of heating system form part for the HRA capital programme and are outside of the revenue maintenance works detailed within this report.

## 7.2 Legal

Implications verified by: **Kevin Molloy**  
**Principal Solicitor Contracts Team**

7.1 The ground under regulation 72 above referred to at clause 3.5 requires that the proposed variation is not substantial in order for it to be an allowable exception to the rules. There have not been many cases on the application of regulation 72, and the courts will proceed from the basis that any allowable exceptions to the procurement rules will be interpreted narrowly. The test for what is substantial is detailed below, and members will need to consider whether a 20% increase in the contract value and term would be viewed by the court as substantial, were a challenge to come in.

(a) the modification renders the contract materially different in character from the one initially concluded;

(b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have—

(i) allowed for the admission of other candidates than those initially selected,

(ii) allowed for the acceptance of a tender other than that originally accepted, or

(iii) attracted additional participants in the procurement procedure;

(c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;

(d) the modification extends the scope of the contract or framework agreement considerably;

(e) a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in paragraph (1)(d).

7.2 It is difficult to say with confidence whether an increase to the contract of roughly 20% in value and length would be considered 'substantial' from a legal standpoint. There have been relatively few legal cases on application of regulation 72, but we do know the courts do interpret its meaning narrowly. There is some risk therefore that a challenge would succeed. However, members are also asked to note the view of the assessment of the likelihood of challenge outlined above at clause 3.5 under the Options Appraisal, which is put at low to moderate.



### 7.3 Diversity and Equality

Implications verified by: **Rebecca Lee**  
**Community Development Team**

While there are no specific equality and diversity implications arising from the recommendations of this report it imperative for the council to ensure residents continue to receive a repairs and maintenance service and there is a risk to residents if this service is not in place in time when the existing contract expires.

Should the gas servicing works not be in place in time there will be a deterioration of living standards for residents as well as the deterioration of properties. It will also mean the council will not meet its landlord obligations under the Fitness for Human Habitation Act with implications for all protected groups with some, potentially, more disadvantaged than others because of age and disability.

If the term of the contract is modified in line with the recommendations outlined in this report, council officers will work with the provider to explore opportunities to extend its existing social value offer to support a wider range of projects to benefit the social, economic and environmental wellbeing of local residents

### 7.4 **Other implications** (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder, and Impact on Looked After Children

None

### 8. **Background papers used in preparing the report** : None

Report to Cabinet on Procurement of Partnership Delivery Model for Housing Works, 8<sup>th</sup> November 2023.

### 9. **Appendices to the report**

None

### **Report Author:**

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