



RECORD OF DELEGATED DECISION (OFFICER)

CONTRACT EXEMPTION

1. Decision Reference No.	CEX432	
2. Name/Title of Officer	Edd de Coverly	
3. Email address of Officer	edecoverly@melton.gov.uk	
4. Contract Title / Subject Matter:	Appointment of experts to defend Planning Appeal Inquiry	
5. Type of Decision:	Exempt	
6. Key Decision?	Yes – expenditure over £50k	
7. Contract type:	<input type="checkbox"/>	Goods
	<input checked="" type="checkbox"/>	Services
	<input type="checkbox"/>	Works
8. Decision Taken:	<ol style="list-style-type: none"> 1. To award the contract for project management, planning, heritage and landscape expert witnesses to defend the Council’s position at Planning Inquiry, to Heaton Planning Ltd as per the received fee quotation. 2. To instruct Andrew Parkinson (Barrister) of Landmark Chambers to represent the Council in respect of the legal position in defending the Inquiry. 3. To enter into any necessary legal documentation to affect the award 4. Exercise the delegated authority given to the Chief Executive, in consultation with the Director for Corporate Services, to access the Corporate Priorities Reserve to fund any one off costs associated with the planning appeal. 	
9. Contract Details		
Service area	Growth & Regeneration / Development Management	
Short contract description	Appointment of Heaton Planning Ltd to defend the Council’s reasons for refusal at Planning Inquiry, including appointment of expert witnesses. Appointment of barrister to provide expert legal advice in respect of the Planning Inquiry	

Length of Exemption (months)	10 months
Exemption start date	1 April 2024
Exemption end date	31 December 2024
Total exemption value (£)*	£77,018 (quote from Heaton) £32,800 (Barrister – Landmark Chambers) Contract exemption therefore up to: £120,000 to provide c.£10k contingency
Cumulative value of all previous Exemption requests (if applicable)	Nil

* Where the total value of the contract is £5,000 or more, the resultant contract must be added to the Contract Register to ensure compliance with Transparency Regulations.

An award notice is required on Contracts Finder for all Contracts with a total value of £20,000 or above. Welland Procurement is responsible for such award notices. Officers must formally advise Welland of the award details, so that they can publish the award notice.

10. Exemption Details

Type of Exemption:	<input checked="" type="checkbox"/> New Requirement <input type="checkbox"/> Change to Existing Requirement <input type="checkbox"/> Replacement to Existing Requirement <input type="checkbox"/> Other
Which rule are you seeking an exemption from?	<input checked="" type="checkbox"/> To advertise <input checked="" type="checkbox"/> To follow a competitive process
Name of Proposed Providers:	Heaton Planning Ltd Barrister – Andrew Parkinson, Landmark Chambers
Has the requirement been subject to a previous Exemption?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes [If yes give details below]
Applicable Exemption:	<input type="checkbox"/> (1) No genuine competition: proprietary or patented goods or services; requirement of such a specialist nature that it can genuinely only be fulfilled by one person or organisation; compatibility with existing goods or services is required and where those existing goods or services can only be sourced from the same supplier.

<p><i>If the justification being relied upon is as detailed in here, the relevant Service Director will need to approve the exemption prior to it being submitted to the Director for Corporate Resources and the Director of Governance and Regulatory Services for approval.</i></p>	<input type="checkbox"/>	<p>(2) There is a sound business case and/or an independent review that there is no value for money in running a full procurement process. Supporting evidence will need to demonstrate market testing and enquiries to other suppliers. This should not be used to avoid competition or where decisions to procure have been postponed and there are insufficient timelines to procure.</p>
	<input type="checkbox"/>	<p>(3) Genuine emergencies: critical preventative or remedial work where there is a real and imminent risk to the safety of people or property arising from hitherto unforeseen 'catastrophic' events or incidents, for example fire, bombing, landslide etc.</p>
	<input checked="" type="checkbox"/>	<p>(4) Urgent Situations not of the Council's own making: the urgency must have been reasonably unforeseeable (e.g. existing supplier going into liquidation) and genuinely be a case of time is of the essence. Urgency arising from the Council's own making (e.g. lack of planning) shall not justify an exemption. Where this exemption is used, a compliant procurement must be implemented as soon as possible.</p>
	<input type="checkbox"/>	<p>(5) Collaborative/Joint Procurement: where another authority/public body is acting as the 'lead buyer' and provided that the Officer can demonstrate those arrangements comply with relevant Regulations and best practice.</p>
	<input type="checkbox"/>	<p>(6) Grants which the Council may receive or make: except where the grant is the form of payment for a contract for services where the Council specifies the output or outcomes to be delivered. The awarding of grants by the Council or on behalf of the Council must be carried out under the principles of openness, fairness, non-discrimination and value for money. Officers cannot choose to treat procurement as a grant in order to avoid conducting a competitive process.</p>
	<input type="checkbox"/>	<p>(7) Contracts for the execution of either mandatory works or provision of goods or services which must be provided by Statutory Provider other than the Council. This includes but is not limited to public utility companies and other legal authorities.</p>

<p>Details of benchmarking or market testing carried out</p>	<p>External quotations were requested from seven independent, experienced planning consultancies to project manage and act as expert witnesses at the appeal for planning, heritage and landscape specialisms. Based on the quotations received, Heaton Planning Ltd were able to fulfil the brief, are experienced consultants and also represented the best value.</p> <p>Officers reviewed in excess of 18 Barrister's CVs from four Chambers in order to have the suitable, required legal representation and expert legal advice in respect of the appeal. Having reviewed the CV's, the relevant experience and potential costs, alongside availability on the appeal dates, the decision has been made to proceed with Andrew Parkinson of Landmark Chambers.</p> <p>The suppliers have been procured in compliance with the contract procedure rules, and all necessary due diligence has been carried out by the Council Officer. A sub-group of the Planning Committee members, including the Chair and Vice Chair, relevant Ward Members and Leader of the Council have maintained oversight of and been consulted on the decisions taken to appoint the required experts to defend the appeal inquiry.</p>	
<p>How will value for money be secured?</p>	<p>As stated above, external quotations were requested from seven independent, experienced planning consultancies to project manage and act as expert witnesses at the appeal for planning, heritage and landscape specialisms. Heaton Planning Ltd were able to fulfil the brief.</p> <p>In excess of 18 barrister's CVs were reviewed and having reviewed the relevant experience, potential costs and availability, the decision was taken to proceed with Andrew Parkinson of Landmark Chambers.</p>	

11. Reasons for Decision:

Planning Committee refused the application reference 22/00537/FUL at their meeting on 5th September 2024, by decision dated 11th September 2024 on four grounds for refusal.

A Special Planning Committee was held on 28th February 2024 where the Committee considered the best approach should an appeal be submitted and resolved to defend any appeal based only on reasons for refusal 2, 3 and 4.

The appeal was submitted in mid-March 2024, and the Council has resolved to defend the appeal. Officers recommended the application for approval, and consequently cannot defend the Council's reasons for refusal. This is because officers would need to appear as expert witnesses to defend the refusal, and be cross examined by an advocate at an Inquiry. Having recommended for approval, doing so would contravene the Royal Town Planning Institute (RTPI) Code of Conduct.

12. Authority / Legal Power:

CPR 16.4 Exemptions must be approved by the Director for Corporate Services and the Assistant Director for Governance & Democracy

The Director for Growth and Regeneration has delegated authority to take this decision in accordance with Part 12.2 of the Officer Scheme of Delegation.

The Assistant Director for Governance and Democracy (Monitoring Officer) and Legal Services Manager have been consulted and agree with the instruction of the barrister.

Delegated authority was given to the to the Chief Executive, in consultation with the Director for Corporate Services, to access the Corporate Priorities Reserve to fund any on off costs associated with the planning appeal at the Council meeting held on 8th February 2024.

13. Background Papers attached?

No

14. Alternative options available / rejected:

1. Officers defend the appeal – rejected as it is against the RTPI code of conduct as they recommended the application for approval.
2. Alternative planning consultancy – Heaton Planning Ltd offered the best fee proposal to defend the appeal, being able to supply the relevant expert witnesses in respect of planning, heritage and landscape specialities.
3. It is necessary to have suitable legal representation (Barrister) to assist the Council due to the complex nature of planning inquiries. There is no alternative option to consider.

15. Implications:

<p>Legal</p>	<p>The Council has the power to enter into contracts in order discharge its functions (Local Government Act 1972, s111 and the Local Government (contract) Act 1997, s1).</p> <p>The Local Government Act 1972 requires the Council to have regulations for how it enters into contracts. In addition to complying with all relevant UK and retained EU legislation every contract entered into on behalf of the Council must also comply with the Council’s Contract Procedure Rules and the Council’s Financial Regulations. The Contract Procedure Rules allow exemptions to the competitive processes contained in the legislation and rules referred, provided that the contract is not above the relevant EU Threshold.</p> <p>Exemptions must be approved by the Director for Corporate Services and the Assistant Director for Governance & Democracy and are subject to one of more of the criteria being fulfilled.</p> <p>Having considered the circumstances leading to the need for appointment of experts and instruction of counsel I am satisfied that the situation was outside of the Council’s control, that reasonable steps have been taken to seek competitive quotes and that the Council is exposed to significant risk if the exemption in Rule 16.4.4 is not applied in this case.</p> <p>[Legal Approval – 03 May 2024]</p>
<p>Finance</p>	<p>The cost of defending the appeal is estimated as £110k, made up of the barrister at c. £38k, and the consultants at £77k. The costs could however go up should more work be required, therefore it is reasonable to accept a £10k contingency. The barrister’s fee estimate is based on day and hourly rates. There is no budget to support this cost as this is unplanned expenditure. Once the final costs are known funding will be drawn down from the Corporate Priorities Reserve in accordance with the delegation given by The Council.</p> <p>[Finance Approval – 30 April 2024]</p>
<p>HR</p>	<p>There are no inhouse resources available for this work. No other HR implications as a result of awarding this contract.</p> <p>[HR Approval - 23 April 2024]</p>
<p>Procurement</p>	<p>Due to the urgency of the requirement from a legal perspective a tender is not possible however competitive processes and value have been attempted in the contact of 7 different suppliers as part of the sourcing.</p> <p>[Procurement Approval – 30 April 2024]</p>

16. Signature of relevant Service Director:	Email approval received Edd de Coverly Chief Executive
17. Signature of Decision Maker with authority to sign: CPR 16.4 Exemptions must be approved by the Director for Corporate Services and the Assistant Director for Governance & Democracy	Email approval received Edd de Coverly Chief Executive Email approval received Dawn Garton Director for Corporate Services
18. Consultation with: CPR 16.4 Exemptions must be approved by the Director for Corporate Services and the Assistant Director for Governance & Democracy	<i>C. H. Tobin</i> Clive Tobin Assistant Director for Governance & Democracy
19. Date:	3 May 2024

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