

Report for: **Cabinet**
Title: **Approval to Deliver 272 Affordable Council Homes, Let Construction Contract and Appropriation of Land at Ashley Road Depot, Tottenham Hale, N17**

Report

Authorised by: **David Joyce, Director of Placemaking and Housing**

Lead Officer: **Robbie Erbmann, Assistant Director for Housing**

Ward(s) affected: **Tottenham Hale**

Report for Key/

Non Key Decision: **Key Decision**

1. Describe the issue under consideration

- 1.1. This report seeks Cabinet's approval, in light of engagement with local residents, to deliver on Council land at Ashley Road Depot, Tottenham Hale N17 9AZ, a scheme of 272 homes for London Affordable Rent ("the Ashley Road Depot development"). Consisting of sixty-six one beds, one hundred and fourteen two beds, sixty-seven three beds, and twenty-five four beds.
- 1.2. In order to facilitate this, Cabinet is being asked to approve use of the Council's powers to appropriate the land from the General Fund for planning purposes, which will permit the Council to utilise its statutory powers to override any easements and any other third party rights and interests, to allow the development to proceed in accordance with the planning permission and then appropriate the land to the HRA for housing purposes following practical completion of the development.
- 1.3. Following on from a formal procurement exercise, Cabinet is asked to approve the appointment of Contractor A to deliver these new Council homes on vacant land.
- 1.4. Cabinet is asked to approve the creation of a detailed Lettings and Housing Management Plan to be authorised by the lead Cabinet Member for Housing Services, Private Renters and Planning following consultation which addresses the new tenure mix, and in particular the increased overall number of one and two bedroom flats, to take account of the recommended tenure switch to 100% London Affordable Rent

2. Cabinet Member Introduction

- 2.1. I'm very pleased to recommend that Cabinet should approve the construction contract for two hundred and seventy-two new Council homes. Ninety-two of these homes will have three or four bedrooms, providing much needed homes for families and twenty-eight homes will be fully accessible for wheelchair-users.

- 2.2. Placemaking is absolutely central to this new development so that it brings real

improvements for the area's existing communities. Residents to its north will be connected with Down Lanes Park and Tottenham Hale centre, with new walking and cycling routes through the development and the connection of Ashley Road with Park View Road North. A new east-west route along the park edge will improve connections to the marshes and Harris Academy. The character of Down Lane Park will be drawn into the site with extensive new planting around its edge, large communal courtyard gardens, leafy streetscape, and spaces for children to play and adults to socialise.

- 2.3. Zero carbon principles have been designed into these new Council homes from the outset, with a Passivhaus approach specific to each building type. As a result, our new tenants will use 30% of energy compared with a typical new-build scheme. Photovoltaic panels will generate more than half the annual predicted energy use.

3. Recommendation

- 3.1. It is recommended that Cabinet:

- 3.1.1. Considers the engagement and consultation carried out on the proposed scheme set out at clauses 6.9 - 6.14;

- 3.1.2. Approves the appointment of Contractor A to undertake building works to provide a total of two-hundred and seventy-two (272) new homes at Ashley Road Depot for a total contract sum and client contingency sum both of which are set out in the exempt part of the report.

- 3.1.3. Approves the appropriation of the land at Ashley Road Depot edged red on the plan attached at Appendix 1 from the General Fund for planning purposes, under Section 122 of the Local Government Act 1972 as it is no longer required for the purpose which it is currently held, and for the purpose of carrying out development as set out in paragraphs 6.1 to 6.8 of this report.

- 3.1.4. Approves the use of the Council's powers under Section 203 of the Housing and Planning Act 2016 to override easements and other third party rights and interests which may be affected by the Ashley Road Depot development, under planning permission Ref: HGY/2022/0752.

- 3.1.5. Delegates to the Director of Placemaking and Housing, after consultation with the s151 Officer (Director of Finance) and the Cabinet Member for Council House-building, Placemaking and Development, authority to make payments of compensation as a result of any genuine claims of third party rights affected by the Ashley Road Depot and payable as a result of recommendation 3.1.3, within the existing scheme of delegation.

- 3.1.6. Approves the appropriation of the land at Ashley Road Depot (edged red in the boundary plan attached at Appendix 1) from planning purposes to the HRA for housing purposes under Section 19 of the Housing Act 1985, after practical completion of the development, currently scheduled for September 2025.

3.1.7. Notes that (subject to the decisions of the local planning authority outlined in paragraph 6.15 of this report) the tenure of the housing units shall be 100% London Affordable Rent homes (as detailed in section 6.6-6.8 of this report) and authorises the Cabinet Member for Housing Services, Private Renters and Planning to approve a detailed Lettings and Housing Management Plan specific to this development following consultation.

4. Reasons for decisions

4.1. In July 2019, Cabinet approved the inclusion of the site known as Ashley Road Depot into the Council's housing delivery programme. This scheme has subsequently been granted planning consent and is ready to progress to construction. This report therefore marks the third, and final, Member led decision to develop on this site.

4.2. Following a formal procurement process, Contractor A has been identified to undertake these works.

5. Alternative options considered

5.1. It would be possible not to appoint a contractor to develop this site for the Council. However, this option was rejected as it does not support the Council's commitment to deliver a new generation of Council homes. In addition, not going ahead at this time would result in the loss of GLA grant funding under the Building Council Homes for Londoners (BCHFL) Programme making the viability of any future scheme difficult.

5.2. This opportunity was procured via a competitive tender through the Westworks Dynamic Purchasing System (DPS), using a JCT Design & Build Contract 2016 with amendments. Alternative options would have been to do a direct appointment to one of the LCP framework providers or do a competitive tender via the GLA's London Developer Panel 2 Framework. These options were rejected: the first because the option was not suitable due to the estimated contract value of the scheme, and the second because a prior competitive tender was unsuccessful as no bids returned were considered to represent value for money for the Council.

5.3. The Council could continue with the scheme without appropriating the site for planning purposes, but this would risk the proposed development being delayed or stopped by potential third-party claims. By utilising the powers under Section 203 of the Housing and Planning Act 2016 (HPA 2016), those who benefit from third party rights will not be able to seek an injunction since those rights or easements that are overridden are converted into a claim for compensation only. The Council recognises the potential rights of third parties and will pay compensation where a legal basis for such payments is established. The Housing Delivery Team actively engaged with local residents about the development of this site as they proceeded through the feasibility and design stages and any comments or objections raised were taken into consideration by Planning Committee in reaching its decision.

- 5.4. The Council could decide not to appropriate the land to the HRA for housing purposes upon practical completion of the building works. However, that should only be done in cases where one of the exceptions contained in section 74(3) of the Local Government and Housing Act 1989 were to apply (e.g. the council intends to dispose of the housing). This option was rejected because it could prevent the Council from being able to offer up these homes for occupation as council housing, thereby not supporting the delivery of much needed affordable homes.

6. Background information

Ashley Road Depot development site

- 6.1. Ashley Road Depot is located at the most northern point of Ashley Road and is bounded by Park View Road to the north and west. The site faces onto Down Lane Park to the south. The wider area to the north and west is an established residential community with streets of terraced Edwardian housing. The site was historically occupied by Veolia who operate Haringey's refuse service and various other users. The site is now vacant and existing buildings have been demolished.
- 6.2. This land is Council-owned held in the General fund. It will be appropriated from the General Fund to the HRA.
- 6.3. The site is included as part of the Ashley Road North site allocation (Policy TH7) in the Tottenham Area Action Plan (2017) and has been identified to provide significant residential development.
- 6.4. In July 2019, Cabinet approved the inclusion of Ashley Road Depot into the Council's Housing Delivery programme to determine its feasibility and capacity for the delivery of new homes and then, if appropriate, its progression through to planning consent.
- 6.5. Designs have been developed that will deliver sixty-six one beds, a hundred and fourteen two beds, sixty-seven three beds, and twenty-five four beds for London Affordable Rent.
- 6.6. The site was originally approved at 50% Social Rent and 50% Market Sale, however due to a downward shift in the sales market this option was no longer viable. Accordingly, it is recommended that the tenure of all the housing units be changed to 100% London Affordable Rent. This has been made possible as a result of securing a grant rate of £160k per unit from the GLA, the highest grant rate secured by any provider through the Building Council Homes for Londoners programme. The change of tenure was agreed in the Council's draft Medium Term Financial Strategy paper in December. It is anticipated that contracts will be signed before the end of March 2023.
- 6.7. It is proposed that a detailed Lettings and Housing Management Plan, specific to this Development, be created to address the increased overall number of one
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and two bedroom flats. This will be a cross-departmental endeavour to ensure that the high quality of design is met by a similar approach to placemaking and management.

- 6.8. It is also the intention to ensure that the plan will be informed through the procurement of an independent housing management advisor with considerable expertise in letting social homes at this scale.
- 6.9. All buildings have been designed to meet Passivhaus design principles and to achieve all the Stage 1 targets and KPI's for Net Zero Carbon buildings.

Engagement and Consultation

- 6.10. Two separate rounds of engagement were undertaken, and scheme proposals were presented to the public virtually and in person.
- 6.11. The first round of the Council's community engagement period commenced on 8th October 2021 and ran until 29th October 2021 and the second round ran from 29th November 2021 to 4th January 2022. Both rounds were engagement activities – they were not consultations under section 105 of the Housing Act 1985 as these were deemed not to be legally required as there was no loss of services of amenities affecting persons occupying council housing under secure tenancies.
- 6.12. Round 2 asked residents for their views on revised proposals that had incorporated residents' feedback from Round 1.
- 6.13. The Council engaged with over two thousand six hundred (2600) households in each round, with one hundred and sixty-seven (167) and ninety-two (92) responses in Round 1 and Round 2 respectively having been received.
- 6.14. Overall positive support for the revised proposals presented in Round 2 was 48%; only 16% responded negatively to the revised proposals. This was an increase in support since Round 1.
- 6.15. The scheme was submitted to planning on the 16th March 2022 and residents were formally consulted as part of this process. On 11 July 2022, the Council's Planning Sub Committee resolved that planning permission be granted . Planning permission was granted on 31st August 2022. It should be noted that officers are currently working with the local planning authority with a view to seeking approval for the proposed change of tenure from 50% open market and 50% formula rents to 100% London Affordable Rent. The development will not commence unless and until the proposed change has been approved by the local planning authority.

The Build Contract

- 6.16. This report is seeking final approval of the construction contract in order to enable the new build works to commence.

- 6.17. The Ashley Road Depot scheme has been designed up to stage 3 of the Royal Institute of British Architects (RIBA) Plan of Works 2020. Since planning approval has been granted, a contractor is now needed to undertake the technical design and new build works. It is currently anticipated that the contract period will be thirty-three months.
- 6.18. Two competitive tenders have been conducted, as the first tender was unsuccessful. The first tender was conducted via the GLA's London Developer Panel 2 Framework. A competitive tender is considered the preferred route for the appointment of a principal contractor.
- 6.19. During the first tender, contractors were asked to respond to a 50% quality 50% price assessment. They responded with their proposals on 30th September 2022.
- 6.20. The tender was evaluated on cost and quality by the Project Team's Project Manager/Quantity Surveyor and the Project Team. The first tender was deemed unsuccessful due to higher than estimated build costs; the costs could not be certified as representing value for money for the Council and would have made the project unviable.
- 6.21. Bidders in the first tender were notified that their bid was unsuccessful on 11th November 2022.
- 6.22. Considering the size, scope, complexity, and abnormalities specific to this project, the project Cost Consultant has concluded that the tender submitted by the recommended contractor has provided a high level of understanding of the scheme and offers reasonable value for money in the current market. The detailed outcome of the quality and cost tender scoring has been provided in Appendix 2.
- 6.23. The contract is to be awarded on a fixed price basis. It includes new build works, site establishments, site enabling works, management costs and includes overheads and profits and there is a minimum defects and liability period of 12 months.
- 6.24. The tender assumes signing of the contract and site possession in March 2023, as the tender offer remains open for twenty-six weeks from the return date and contracts must be signed before the end of March 2023 to secure grant funding.

Appropriation of Land

- 6.25. The Ashley Road Depot development site (edged red in the plan at Appendix 1) is currently held in the General Fund. The site was historically occupied by Veolia who operate Haringey's refuse service and various other users. The site is now vacant. In order to carry out the proposed development of the site, the site must be appropriated for planning purposes pursuant to Section 122 of the Local Government Act 1972 as it is no longer required for the purposes for which it is currently held.

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- 6.26. The appropriation of the land and the subsequent development will enable the

Council to provide truly sustainable new homes that aspire to meet net zero carbon as far as possible and will also create well designed accommodation which will foster a sense of community.

- 6.27. By appropriating the land for planning purposes, allows the Council's to use its powers under section 203 of the Housing and Planning Act ('HPA') 2016 to override any easements and third party rights and interests infringed by the Ashley Road Depot development. This may include a right to light, or right of way or interest in land which entitles a neighbouring landowner to enjoy such rights over the development site.

Any development which interferes with that right may entitle the owner of that right to seek an injunction preventing the development going ahead or damages for the value of the right lost because of the interference. The Council recognises the potential rights of third parties and will pay compensation where a legal basis for such payments is established.

- 6.28. The use of the Council's powers under section 203 for the development site would override potentially enforceable third-party rights and interests that may prevent the construction of the development from progressing. It will have the effect of turning genuine claims into a claim for compensation for the loss of that right.
- 6.29. To appropriate the land at this development site into the HRA for housing purposes on completion of the development will enable the Council to then offer these homes for rent at affordable levels thereby positively contributing to the demand for affordable housing in the Borough.

6.30. **Procurement Process**

- 6.31. A competitive tender process, led by the Council's Strategic Procurement (SP) team was undertaken via Westworks Dynamic Purchasing System (DPS) route – Category 3 Lot (**OJEU Notice 2018/S 155-354660**) on 18th November 2022 following an unsuccessful similar exercise under the Panel Members of the London Development Panel 2 (LDP2) of the Greater London Authority (GLA) Framework.
- 6.32. All 23 Suppliers successfully enrolled under the above category were invited to participate in the procurement however only one bid was received by the set deadline date of 13th January 2023
- 6.33. The received bid was initially checked for completeness and compliance. As part of this exercise, it was noted that the submitted bid did not meet the requirements set out under paragraph 25.5 nor 25.6 of the Invitation to Tender document.
- 6.34. The bid was however assessed on the basis of 40% Price and 60% Quality criteria as set out in the Invitation to Tender pack.
- 6.35. A panel of evaluators, made up of three (3) Council Officers, conducted the quality evaluation exercise . This was followed by a moderation meeting led by Strategic Procurement to agree on consensus scores.

- 6.36. The commercial evaluation exercise was conducted by an external consultant, Madlins. A series of clarifications have been raised with the bidder at this stage. A final commercial report was produced by Madlins following the bidder's response to the clarifications.
- 6.37. A provisional tender sum analysis based on the cost consultants estimate has been provided in Appendix 2, which is exempt due to the commercially sensitive nature of this information.
- 6.38. The provisional breakdown scores of both the price and quality assessments have been included in Appendix 2, which is exempt due to the commercially sensitive nature of this information.

7. Contribution of Strategic Outcomes

- 7.1. The recommendations in this report will support the delivery of the Housing Priority in the new Borough Plan, which sets out in its first outcome that *"We will work together to deliver the new homes Haringey needs, especially new affordable homes."* Within this outcome, the Corporate Delivery Plan sets the aim to *"Ensure that new developments provide affordable homes with the right mix of tenures to meet the wide range of needs across the borough, prioritising new social rented homes."*
- 7.2. In particular, the recommendations in this report are explicitly about delivering the aim *"to deliver 3,000 new council homes at council rents by 2031"*. The proposals in this report contribute directly to the strategic outcomes on new housing supply that are at the core of the aims of the Council as expressed in the Borough Plan.

8. Statutory Officers comments

8.1. Legal

Appropriation for Planning Purposes

- 8.2. The Council currently holds the land for general purposes. In order to carry out the development under the planning permission, the development will need to be appropriated from the general fund for planning purposes.
- 8.3. Section 122 LGA 1972 provides that:
"The Council may appropriate for any purpose for which the Council is authorised by statute to acquire land by agreement any land which belongs to it and is longer required for the purpose for which it is held immediately before the appropriation."

Section 122 LGA 1972 provides that the Council may not appropriate land constituting or forming part of an 'open space' or land forming part of a common (unless it is common or fuel or field garden allotment of less than 250 square yards) unless they first advertise their intention to do so under the section.

The requirements of Section 122 LGA 1972 set out above are satisfied in respect of the site at Ashley Road Depot and can therefore be appropriated as:

- (a) the site is Council owned land;
- (b) the site is no longer required for general purposes; and
- (c) the Council is seeking to appropriate the land for the statutory purpose of planning.

The site does not contain open space.

Section 203 of the Housing and Planning Act 2016 (“HPA 2016”)

- 8.4. By appropriating the land for planning purposes, the Council is therefore able to utilise the powers contained in Section 203 of the HPA 2016.
- 8.5. Under Section 203, the Council may carry out building or maintenance work even it involves (a) interfering with a relevant right or interest (b) breaching a restriction as to use of land.

This applies to building work where: -

- a) there is planning consent,
- b) the work is on land for the purpose for which the land was vested, acquired or appropriated for planning purposes under section s.246(1) of the Town and Country Act 1990;
- c) the authority could acquire the land compulsorily for the purpose of the building work.

- 8.6. The requirements of Section 203 will be satisfied as,
 - a) planning permission has been granted for the development;
 - b) the land will be appropriated for planning purposes under the Section 122 of the LGA 1972; and
 - c) the Council could acquire the land compulsorily for the purposes of the building work. Section 226(1) of the Town and Country Planning Act 1990 contains the compulsory purchase powers of the Council which ‘the authority think that the acquisition will facilitate the carrying out the development, re-development on or in relation to the land’ or ‘required for a purpose which is necessary to achieve the proper planning of an area in which the land is situated. This requirement is satisfied as the Council considers that the development will lead to an improvement in the economic, social or environmental wellbeing of the areas.
- 8.7. As set out in this report compensation will be payable to those whose genuine claims to rights are infringed by the development and overridden under section 203.
- 8.8. The Council will also be appropriating the site at Ashley Road Depot following practical completion (timetabled for September 2025) of the development for housing purposes into the HRA. The Council can under Section 19 (1) of the Housing Act 1985 appropriate for housing purposes any land for the time being vested in them and at their disposal. This appropriation is necessary as the new build units will be used for social housing by the Council and therefore must be

held in the HRA.

Contract and procurement

- 8.9. The contract has been tendered via the Westworks DPS Category 3 Lot. The use of a Dynamic Purchasing System is compliant with the Public Contracts Regulations 2015 (Reg 34) (the Regulations) and also with the Council's Contract Standing Orders (CSO 9.04). The Council's Central Procurement team has confirmed that the process has been conducted in accordance with the Regulations and with the Westworks DPS.
- 8.10. The award of the contract is a Key Decision and, as such, needs to comply with the Council's governance processes in respect of Key Decisions including publication in the Forward Plan, which has been done in this case.
- 8.11. The Cabinet has power under CSO 9.07.1 (d) (contracts valued at £500,000 or more) to approve the award of contract.
- 8.12. Further comments are contained in the exempt part of the report.

Lettings & Housing Management Plan

- 8.13. Permanent tenants of the development will be secure tenants. Allocation of secure tenancies is generally subject to the Council's Housing Allocations Policy.
- 8.14. Departure from that Policy is provided for by section 11 of the Policy, dealing with Local Lettings Policies, and a default policy, the Neighbourhood Moves Policy, is provided for (see Appendix 1). It is not proposed that that Policy be adopted for this development; the Allocation Policy in these circumstances delegates authority to the lead Cabinet Member for Housing Services, Private Renters and Planning to approve Local Lettings Policies, subject to consultation and an Equalities Impact Assessment.

London Affordable Rent tenure

- 8.15. In general rents charged to secure tenants are restricted to Formula Rent (i.e. social rent) by the Rent Standard. There are however exceptions to the Rent Standard permitting the Council to charge an affordable rent in excess of the Formula Rent where the property is provided by the Council:
- i. Either pursuant to a housing supply delivery agreement with the Greater London Authority and the accommodation is permitted by that agreement to be let at an affordable rent; or
 - ii. the Greater London Authority has agreed that it is appropriate for the accommodation to be let at an affordable rent
- 8.16. The Council is therefore able to charge London Affordable Rent to tenants of these homes. This will not affect their status as secure tenants.
- 8.17. As per para 11.4.2 of the BCHFL funding agreement, under the terms of the contract the Council must 'not charge a higher initial rent in relation to a LAR

Dwelling than the Benchmark Rent Level as set out in the relevant Named Project Details and ensure that such rent continues to be set and charged in accordance with the applicable criteria of the London Affordable Rent."

8.18. Under the standard definitions in the contract, this is confirmed by the definition of 'AHP Housing' which is 'Housing provided by the Grant Recipient pursuant to this Agreement that will be made available: c) permanently at a London Affordable Rent'.

8.19. **Procurement**

8.20. Strategic Procurement (SP) note that this report relates to the approval of construction contract and land appropriation at Ashley Road Depot, N17 9AZ.

8.21. Please refer to further comments in Appendix 2, Exempt Report

8.22. **Finance**

8.23. The scheme will deliver two hundred and seventy-two units of council homes on completion at a total construction contract value outlined in exempt report.

8.24. The scheme is part of the council's housing delivery programme, and there is budget provision in the current HRA medium-term financial plan for this scheme/

8.25. Further finance comments are contained in the exempt report.

8.26. **Equality**

8.27. The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

8.28. The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

8.29. The proposed decision relates to new build works to provide two hundred and seventy-two new Council homes at London Affordable rent, at Ashley Road Depot, N17 9AZ: this includes the appointment of a contractor, the appropriation of land at Ashley Road Depot, and approval of plans to override easements and other rights of neighbouring properties.

8.30. The decision will increase the supply of affordable homes to local residents. This is

likely to have a positive impact on individuals in temporary accommodation as well as those who are vulnerable to homelessness. Data held by the council suggests that women, young people, and BAME communities are over-represented among those living in temporary accommodation. Furthermore, individuals with these protected characteristics, as well as those who identify as LGBT+ and individuals with disabilities are known to be vulnerable to homelessness. It is further noted that twenty-eight of the two-hundred and seventy-two homes are fully accessible for wheelchair users which will benefit residents with certain disabilities. As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

- 8.31. As an organisation conducting a public function on behalf of a public body, the Contractor, Contractor A, will be obliged to have due regard for the need to achieve the three aims of the Public Sector Equality Duty as stated above. Appropriate contract management arrangements will be established to ensure that the delivery of the major works does not result in any preventable or disproportionate inequality.

9. Use of appendices

Appendix 1 – Red line boundaries Ashley Road Depot.

Appendix 2 – NOT FOR PUBLICATION - Exempt financial information relating to the award of a contract for the construction works on Ashley Road Depot.

10. Local Government (Access to Information) Act 1985

Appendix 2 is NOT FOR PUBLICATION by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).