

Report for: **Cabinet 17 October 2023**
Title: **Approval of construction contract at land adjacent to 318A White Hart Lane, N17**
Report
Authorised by: **David Joyce, Director of Placemaking and Housing**
Lead Officer: **Robbie Erbmman, Assistant Director for Housing**
Ward(s) affected: **Bruce Castle**
Report for Key/
Non Key Decision: **Key Decision**

1. Describe the issue under consideration

1.1. This report seeks Cabinet's approval, to complete the delivery of six new homes for London Affordable Rent on Council Land adjacent to 318A White Hart Lane, N17. The scheme will provide six new homes towards Haringey's pledge to build 3000 Council homes by 2031. Detailed planning permission was granted on 21 September 2020. Works started on site on September 2021. However, following repeated underperformance and entry into a Creditors Voluntary Arrangement by the appointed contractor, Cosmur Construction Ltd, the Council terminated the contract in April 2023. Subsequently, the process to appoint a new contractor to complete the development has been underway since late Spring.

1.2. Cabinet is asked to approve the appointment of contractor A to complete the building of these new Council homes.

2. Cabinet Member Introduction

2.1 Cabinet has the opportunity here to approve the completion of six high quality new homes. That decision would change the lives of six households – including 13 children – by giving them the chance to move from overcrowded, insecure accommodation into a beautifully-designed new home where they can flourish with plenty of space both inside and out. And these new homes will be much cheaper for them to run – they are almost fully zero carbon with excellent insulation, mechanical air source heat pumps, and photovoltaic panels.

2.2 The new development will also enhance a prominent busy location opposite Tottenham Cemetery at the junction of White Hart Lane and Weir Hall Road by turning a vacant corner site into a new and attractive focal point with increased biodiversity. This will make a positive contribute to the nature of White Hart Lane and its connecting artery roads.

2.3 It has been a challenging journey to this point, but the way we have managed the failed previous contractor and kept this project on track shows just how far

our housing delivery programme has come. After 40 years with no new Council homes in Haringey, we have now built up the skills and capacity to deliver for the long term.

3. Recommendation

It is recommended that Cabinet:

- 3.1 Approves pursuant to the Council's Contract Standing Orders (CSO) 9.07.01d, the appointment of Contractor A (named in the exempt part of the report) to undertake building works to complete the provision of six London Affordable Rents at land adjacent to 318 White Hart Lane for the contract sum of £1,811,630.00.
- 3.2 The works contingency sum, and an increase in the total scheme costs, as set out in Appendix 2.
- 3.3 Approves a letter of intent up to a maximum value of £181,163 being no more than 10% of the contract sum.

4. Reasons for decisions

- 4.1. The land adjacent to 318a White Hart Lane was approved by Cabinet in July 2019 to be included in the Council's housing delivery programme. The scheme has subsequently been granted planning consent and a works contractor, Cosmur Construction Ltd, was appointed to build the scheme in July 2021. The project encountered a number of delays due to the Contractor's poor performance. The Council terminated the contract and took back possession of the site which currently has a partially constructed building. A tender process was initiated in late spring 2023 to appoint a new contractor to complete the development of the six London Affordable Rented homes.
- 4.2. The Council seeks to performance manage all Contractors by continual vigilance by the Council's Project Manager and the oversight of both Employer's Agent and Clerk of Works to every New Homes Build Project.
- 4.3. This continuous monitoring, allied to frequent Site Meetings and both formal and unannounced Site inspections, ensures that the Council is able to obtain value for money on all New Homes Projects by reducing waste on site in terms of time, materials and labour costs, and works collaboratively with our appointed Contractors to build sustainable partnership working, which enables problems to be solved in a manner that ensures the best and most cost effective outcomes for the Council and our future Tenants.
- 4.4. This partnership working relies on trust and transparency on both sides of the working relationship and, regrettably, this was not an approach adopted by the previous Contractor who chose not to openly identify their corporate problems and instead mistakenly relied on the Council lacking proper professional diligence.

- 4.5. This working practice was quickly identified by the Council Team, including the external and independent Employer's Agent and Clerk of Works and despite more frequent site meetings and discussions at Director level with the Contractor, their poor performance led, ultimately, to their abandonment of the site in mid – Construction, followed, shortly afterwards, by their entry into a Company Voluntary Arrangement (CVA). A CVA is used when a limited company is insolvent, it can use a CVA to pay creditors over a fixed period.
- 4.6. The Council always seeks to determine a Contractor Company's financial health by due diligence at the time of entry into the Contract, hence the reason for Contract terminations to be a, very rarely used, last resort. In this case the financial checks were satisfactory at the date of the Contract, but the extraordinary levels of labour and materials inflation experienced in 2021 and 2022 as a consequence of Brexit and the War in Ukraine, had an extremely adverse effect on the finances of the Contractor in this case and the Council, having taken independent legal advice, was forced to adopt this very unusual step.
- 4.7. Contractor A has been selected via a formal tender process to undertake these works. The competitive nature of the Tender and the evaluation of the Tender returns (more particularly described below) has involved Council Officers in additional due diligence and detailed technical clarification to ensure that best value for money can be demonstrated and achieved and, if approved, Contractor A will be subject to the continuous monitoring and performance assessment described above until the new homes have been delivered and occupied.
- 4.8. The Council's New Homes Employer's Requirements have two principal objectives: 1. To ensure that the next generation of Council Housing is built to the highest standards of design, engineering and specification and 2. That the new Homes will be as fuel efficient as possible and will be readily capable of economically viable maintenance throughout their lifespan of not less than 80 years. These are the tests to which all Contractors are put, and the Strategic Procurement Team have been vigilant in ensuring that all of the compliant Tenderers for this Project were subject to these tests of quality and performance which are scored separately and rank equally with the price mechanism against which each Bid is evaluated.

5. Alternative options considered

- 5.1. It would be possible not to appoint a Contractor to complete the development of this site for the Council. However, this option was rejected because it would leave a partially constructed building on the site and would not support the Council's commitment to deliver a new generation of Council homes.
- 5.2. Additionally, a failure to complete the partially constructed development would lead to a further burden of cost being placed on the Council's Temporary Accommodation portfolio and supporting Services and would have potential for some reputational damage to the Council. This was not considered to be a

viable, value for money option for the Council which can, by the appointment of Contractor A, continue to deliver a high- quality scheme at a competitive cost.

5.3. The Council could decide not to appropriate the land for housing purposes upon practical completion of the building works. This option was rejected because it would prevent the Council from being able to offer up these homes for occupation as social housing, thereby not supporting the delivery of much needed affordable homes.

6. Background information

Land adjacent to 318 White Hart Lane development site

6.1. As shown in the red line boundary plan (Appendix 1), the site is land adjacent to 318a White Hart Lane, a prominent corner at the junction of White Hart Lane and Weir Hall Road, opposite Tottenham Cemetery. The immediate area is predominantly characterised by two-storey, terraced houses.

6.2. This land is owned by the Council and held within the HRA.

6.3. In July 2019, Cabinet approved the inclusion of the land adjacent to 318a White Hart Lane site into the Council's housing delivery programme to determine its feasibility and capacity for the delivery of new homes on the basis that, if appropriate, their progression through to planning consent.

6.4. Designs have been developed that will deliver six homes for London Affordable Rent comprising: 2 no. three-bedroom five-person maisonettes; 1 no. three-bedroom five-person flat; 2 no. two-bedroom, four-person flats; and 1 no. one-bedroom two-person flat.

6.5. The development proposed would not change any existing amenities for Council tenants and does not require the Council to consult under section 105 Housing Act 1985.

6.6. An initial resident engagement event was held on 11th February 2020 at Selby Centre N17. The proposals received a majority positive response from Members and residents in attendance. Residents highlighted the issue of limited public parking on match days and concerns regarding the density of the proposed scheme and reported issues of bulk waste dumping on the existing site.

6.7. The scheme was submitted to planning on 5th June 2020 and residents were again formally consulted as part of this process. During the consultation period, in response to the positive traffic report considerations, it was decided that the eventual residents would be eligible to apply for parking permits. Planning approval of the scheme was granted after considering responses to the statutory planning consultation on 21st September 2020.

6.8. The contractor was awarded a 52-week contract to deliver six homes in July 2019, took possession of the site on the 6 September 2021 and was contractually obliged to have completed the scheme by 16 September 2022.

However, a number of issues arose, and it became necessary to terminate the contract with the original contractor.

- 6.9. The current status of the build is that the structure is almost completed. Some elements of the works are out of sequence, for example the installation of the windows. There have been no works on site since December 2022. We have protected the exposed cavity trays to prevent further deterioration to the building. The Council is committed to completing the new homes as part of its pledge to deliver 3000 council homes by 2031.
- 6.10. The Council's resident engagement team sent letters to residents in April 2023 notifying them that the Contractor was unable to deliver this scheme and that we were retendering this scheme and would provide an update once we had completed the tender process.
- 6.11. To complete the works will incur additional costs, which include the risks of taking responsibility for the existing building's design and construction quality. This risk will be mitigated in part by the remedial works package and design development before the complete works commence.
- 6.12. The re-tender was procured via a competitive tender through the Westworks Dynamic Purchasing System (Category 2), using the JCT Design & Build Contract 2016 with amendments, recommended by Strategic Procurement.
- 6.13. The procurement process was undertaken jointly with two separate Lots – White Hart Lane Lot 1 and Edith Road Lot 2. Bidders were required to submit prices for both Lots during this tender exercise. Bidders were required to provide a contract sum for each of the Lots and provide a combined price in the Form of Tender for both Lots that may offer a discounted price if both Lots were awarded to one contractor.
- 6.14. The selected contractor was asked to respond based on 50% quality and 50% price assessments. They responded with their proposals on 24 July 2023. Full 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.
- 6.15. Costs were evaluated independently by the Project Team's Cost Consultant to ensure value for money in line with current construction market trends.
- 6.16. The contract is to be awarded on a fixed price basis. It includes new build works, site establishments, site enabling works, management costs, and overheads and profits. The defects liability period will be 12 months.
- 6.17. The decision to approve the appropriation of the land initially for planning, and then housing use at completion, was granted at the Cabinet Member's signing of 14th July 2021.
- 6.18. The contract was tendered via the West Works Dynamic Purchasing System (Category 2) on 23 May 2023.

6.19. In total seventeen (17) suppliers registered under (Category 2) were initially invited to tender. Five contractors submitted Expressions of Interest, and 3 opted in to submit bids. Three tender submissions were received by the tender deadline date of the 25 July 2023. Tender submissions were checked for compliance and completeness by the Strategic Procurement team on 2 August 2023. All were found to be compliant and complete and were taken forward to evaluation.

6.20. The tenders were evaluated for Quality and Price, as set out in the ITT document.

6.21. Following the evaluation process, the total overall Quality and Price scores were combined to provide the ranking of the bidders in accordance with the Most Economically Advantageous Tender (MEAT) and as outlined in the tender documents.

6.22. The information below summarise the overall tender scores achieved by each Bidder in line with the tender evaluation criteria of 50% Price and 50% Quality as set out in the Invitation to Tender document.

6.23. Bidder A had the highest overall score for both Lots 1 and 2 and were required to offer a discount offering value for money at 2.25% per Lot.

Supplier	Quality Score (six0%)	Price Score (40%)	Total Score (100%)
Bidder A	33.90	50	83.90
Bidder B	32.90	47.69	80.59
Bidder C	28.20	47.53	75.73

7. Contribution of Strategic Outcomes

7.1. The recommendations in this report will support the outcomes of the Corporate Delivery Plan, in particular theme 5, “Homes for the Future”.

7.2. In particular, the recommendations in this report deliver explicitly on the aim “to deliver 3,000 new council homes (by 2031) that are very close to zero carbon”.

8. Carbon and Climate Change

8.1. Haringey is committed to ensuring that its new homes will be environmentally sustainable, with the aspiration of achieving a target of zero carbon. The homes in this scheme are expected to achieve an 84.4 % carbon reduction, which is a significantly higher reduction than the targets set by central government.

9. Statutory Officers Comments

9.1 Legal

9.2 The Head of Legal and Governance (Monitoring Officer) has been consulted in the preparation of this report.

9.3 The Council has invited tenders via a Dynamic Purchasing System which is a compliant method of procurement under the Public Contracts Regulations 2015 and is also provided for in the Council's Contract Standing Orders (CSO 9.04).

9.4 The award of the contract will be a Key Decision and, as such, needs to comply with the Council's governance requirements in respect of Key Decisions including publication in the Forward Plan.

9.5 Cabinet has power to approve the recommendations under CSO 9.07.1.d (contracts valued at £500,000 or more).

9.6 Cabinet also has power to approve the issuance of a letter of intent.

9.7 The Head of Legal and Governance (Monitoring Officer) confirms that there are no legal reasons preventing Cabinet from approving the recommendations in this report:

9.8 Procurement

9.9 Strategic Procurement (SP) note that this report relates to the approval to award a contract to an identified supplier undertake works to complete the provision of six London Affordable Rent.

9.10. A competitive tender process was undertaken in line with regulation 34.

9.11. SP support the recommendation to approve the award in accordance with CSO 9.07.01(d)

9.12 Finance

9.13 The scheme is on course to deliver six new homes at London Affordable Rent

9.14 The cost to completion has been assessed and can be contained within the HRA.

9.15 Further finance comments are contained in Appendix 2 – Exempt report attached.

9.16 Equality

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

9.17.1 Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act.

9.17.2 Advance equality of opportunity between people who share those protected characteristics and people who do not.

9.17.3 Foster good relations between people who share those characteristics and people who do not.

9.18. 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.

9.19. Although it is not enforced in legislation as a protected characteristic, Haringey Council treats socioeconomic status as a local protected characteristic.

9.20. The proposed decision relates to new build works to provide six new London Affordable Rented homes on land adjacent to 318a White Hart Lane N17 Road this includes the appointment of a contractor, the appropriation of land and approval of plans to override easements and other rights of neighbouring properties.

9.21 The decision will increase the supply of Council homes to residents. This is likely to have a positive impact on residents in out-of-borough placements and temporary accommodation, as well as those who are vulnerable to homelessness. Data held by the council suggests that women, young people, BAME people and low- income people are over-represented among those living in temporary accommodation. Furthermore, individuals with these protected characteristics, as well as those who identify as LGBT+ and disabled people, are known to be vulnerable to homelessness. This decision is therefore likely to have a positive impact on those who share the protected characteristics.

9.22 From an equalities perspective, it is noted that the engagement with residents has taken place and that the feedback from consultation did not require any major reconfiguration, of the design, that the land in question is currently held for planning purposes and is vacant, and that there is no reason to believe that any third party rights will be significantly infringed by the development.

9.23 In addition, as an organisation carrying out a public function on behalf of a public body, the contractor will be obliged to have due regard for the need to achieve the three aims of the Public Sector Equality Duty as stated above.

10 Use of appendices

Appendix 1 – Red line boundaries land adjacent to 318 White Hart Lane N17.

Appendix 2 – Exempt Report

Appendix 3 – Financial appraisal (ProVal) exempt

11 Local Government (Access to Information) Act 1985

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