

Report for: **Cabinet 15 September 2020**
Title: **St Mary's Close, N17 and Nightingale Lane, N8 approval of construction contract**
Report
Authorised by: **David Joyce, Director of Housing, Regeneration and Planning**
Lead Officer: **Robbie Erbmann, Assistant Director for Housing**
Ward(s) affected: **Hornsey & Tottenham Hale**
Report for Key/
Non Key Decision: **Key Decision**

1. Describe the issue under consideration

- 1.1 This report seeks approval to appoint the recommended contractor, Cosmur Construction Limited, to complete a new build development of five Council rented homes; two at St Mary's Close N17 and three at Nightingale Lane N8, and to appropriate the land for planning purposes to facilitate the development process.
- 1.2 On approval, these developments will be the seventh and eighth scheme to move to a start on site, of the 58 schemes in the Council housing delivery programme that the Council intends to directly deliver itself. It will be the twelfth and thirteenth schemes to move to a start on site in the overall programme.

2. Cabinet Member Introduction

This administration is committed to building a new generation of Council homes, and having identified sites all over the borough, carried out assessments, and achieved planning consents, I am delighted that we are ready to get started on yet another scheme, the seventh and eighth direct delivery projects in our programme and the twelfth and thirteenth in our programme overall. Five new Council homes in two wards – two three-bedroom homes and three two-bedroom homes – means that five households who are not currently adequately housed will be living in homes that meet their needs. I am pleased to recommend this paper to Cabinet, and looking forward to seeing work begin on site soon.

3. Recommendation

3.1. It is recommended that Cabinet:

- 3.1.1 Approves the appointment of Cosmur Construction Limited to undertake the new build works to provide a total of five Council rented homes at St Mary's Close and Nightingale Lane for a total contract sum of £1,348,437.49 and to approve the client contingency sum set out in the exempt part of the report.
- 3.1.2 Approves the appropriation of the land at St Mary's Close and Nightingale Lane (edged red in the plans attached at Appendix 1) from housing purposes to planning purposes under Section 122 of the Local Government Act 1972 as they are no longer required for the purpose which they are currently held, and for the purpose of carrying out development as set out in paragraphs 6.1 to 6.27 of this report.
- 3.1.3 Approves the use of the Council's powers under Section 203 of the Housing and Planning Act 2016 to override easements and other rights of neighbouring properties infringed upon by the St Mary's development, under planning permission Ref: HGY/2020/0136 and by Nightingale Lane development, under planning permission Ref: HGY/2020/0159.
- 3.1.4 Delegates to the Director of Housing, Regeneration and Planning, after

consultation with the Director of Finance and the Cabinet Member for Housing and Estate Renewal, authority to make payments of compensation as a result of any infringement arising from the development and the recommendation 3.1.3, within the existing scheme of delegation.

- 3.1.5 Approves the appropriation of the land at St Mary's Close and Nightingale Lane (edged red in the plans attached at Appendix 1) from planning purposes back to housing purposes under Section 19 of the Housing Act 1985, after practical completion of the development on 31 December 2021.

4. Reasons for decisions

- 4.1. St Mary's Close and Nightingale Lane was approved by Cabinet on 9 July 2019 to be included in the Council 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 these two sites.
- 4.2. Following a formal tender process, a contractor has been identified to undertake these works.
- 4.3. The appropriation of the site for planning purposes is required as it will allow the Council to use the powers contained in Section 203 to override easements and other rights of neighbouring properties and will prevent injunctions that could delay or prevent the Council's proposed development. Section 203 converts the right to seek an injunction into a right to compensation. The site will need to be appropriated back from planning purposes to housing purposes on completion of the development to enable the Council to use the land for housing and let five new Council homes at Council rent.
- 4.4. The new development at St Mary's Close and Nightingale Lane will also allow the Council to regenerate the land, helping to reduce the anti-social behaviour currently attracted to the sites, improving the security and aesthetics for the surrounding existing residents. In addition, the development will help support delivery of the Borough Plan, Priority 1: "Our vision is for a safe, stable and affordable home for everyone, whatever their circumstances".

5. Alternative options considered

- 5.1. It would be possible not to develop these sites for housing purposes. However, this option was rejected as it does not support the Council's commitment to deliver a new generation of Council homes.
- 5.2. This opportunity was procured via a direct appointment from the London Construction Programme (LCP) Major Works 2019 Framework Agreement, the recommended route for a contract of this value. An alternative option would have been to run a competitive tender from the LCP, but this option was rejected due to limited interest from the framework contractors.
- 5.3. The Council could continue with these schemes 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. Making use of this power allows the Council to override these third rights and allows the third party to make 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 these sites 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. For these reasons, this option was rejected.

- 5.4. 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 could 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

St Mary's and Nightingale Lane development sites

- 6.1. As shown in the plans of the sites in Appendix 1, St Mary's Close is in North Tottenham, located East of Tottenham High Road off Kemble Road, in Tottenham Hale ward. The site currently consists of an underused Council car park, which historically contained garages and have since been demolished. It is in very close proximity to Hartington Park and the shops and busses on the High Road. The nearest railway station is Bruce Grove, a 9-minute walk away.
- 6.2. As shown in the plans of the sites in Appendix 1, Nightingale Lane is in Hornsey Ward, to the West of the Borough, located on the corner of Nightingale Lane and Brook Road. The development site sits adjacent to number 44 Nightingale Lane and marks the end of a row of Victorian terraced houses along Nightingale Lane. The site currently consists of four underused garages and is a short walk to Alexandra Palace Park, the shops and buses on Hornsey High Street. The site is not within a conservation area however the northern section of Nightingale Lane is characterised by Victorian brick terraced houses.
- 6.3. These sites are Council-owned land held in the HRA.
- 6.4. On 7 July 2019, Cabinet approved the inclusion of St Mary's and Nightingale Lane into the Council's housing delivery programme in order to determine their feasibility and capacity for the delivery of new homes and then, if appropriate, their progression through to planning consent.
- 6.5. Designs have been developed that will deliver two three-bedroom Council houses for Council rent, suitable for occupation by a family at St Mary's Close and three two-bedroom Council flats at Nightingale Lane.
- 6.6. A resident engagement event was held on the 29 October at the Civic Centre. The proposals were positively received by Members and local residents and no major concerns were raised. The scheme was submitted to planning in January 2020 and residents were formally consulted as part of this process.
- 6.7. Planning approval of Nightingale Lane scheme was granted on 12 March 2020. Planning approval of St Mary's scheme was granted on 2 July 2020.

The Build Contract

- 6.8. This report is seeking final approval of the construction contract to enable the new build works to commence.
- 6.9. The housing schemes at St Mary's Close and Nightingale Lane have both been designed up to stage 3 of the Royal Institute of British Architects (RIBA) Plan of Works 2019. Since planning approval has been granted, a contractor is now needed to undertake the new build works; it is currently anticipated that the contract period will be 12 months.
- 6.10. The contractor tender process involved conducting two expression of interest exercises

via the LCP MW 2019 framework, the first in January 2020 and the second in May 2020. Due to limited interest in a competitive tender it was decided that a direct appointment with one of the interested parties on the framework was the most appropriate route.

- 6.11. The selected contractor, Cosmur Construction Limited, which is based in North London, was asked to respond to a 60% quality and 40% price assessment. They responded with their proposal on 19 June 2020. Full tender sum analysis has been provided in Appendix 2, which is exempt due to the commercially sensitive nature of this information.
- 6.12. The quality assessment was conducted via a pre-agreed list of questions that were included as part of the Qualitative Delivery Proposals. Each question was offered a score between 0 (question not answered) and 5 (excellent) together with a weighted score. The quality assessment was reviewed by the Procurement Team to ensure that a high level of quality was demonstrated, i.e. total scores of at least 80% (16 out of 20).
- 6.13. Cost was evaluated independently by the Project Team's Cost Consultant to ensure value for money in line with current market trends.
- 6.14. Cosmur Construction Limited's total contract sum is £1,348,437.49. Considering the size, scope, complexity, and abnormalities specific to this project, the Project Cost Consultant has concluded that the tender submitted by Cosmur Construction Limited offers reasonable value for money in the current market.
- 6.15. The outcome of the quality and cost proposal is shown below.

| Quality Proposal | Cost Proposal |
|---|---------------|
| Question 1 Organisation and structure of project team = 5/5 | £1,348,437.49 |
| Question 2 Health & Safety = 5/5 | |
| Question 3 Quality Management = 4/5 | |
| Question 4 Track record with neighbour engagement= 4/5 | |
| Question 5 Social Value = 3/5 | |
| Total qualitative score = 50% | |

- 6.16. The recommendation is therefore to award the contract to Cosmur Construction Limited. Their proposal demonstrated good quality across the four questions. It is also considered good value for money and the Cost Consultant for this project is satisfied with the pricing offered by Cosmur Construction Limited.
- 6.17. 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 defects and liability period of 12 months.
- 6.18. The tender assumes signing of the contract and site possession by 24 September 2020, as the tender offer remains open for 14 weeks from the return date.
- 6.19. During this period of uncertainty due to COVID-19 it should be noted that there is a risk that the contractor may be reluctant to enter into a contract if they do not believe they can deliver on all the conditions of the contract such as start on site date or if they cannot obtain the material required for the works. Therefore, during this period, the project team is keeping this under review to ensure that both Council and Contractor are protected.
- 6.20. The Council was seeking to start construction works for the schemes in September 2020 with completion expected in September 2021. However, this programme will be dependent on COVID-19 developments which have already pushed the programme back. It is estimated that these schemes may now start on site in December 2020 instead, with completion in December 2021.

Appropriation of land

- 6.21. This report seeks approval to appropriate St Mary's Close and Nightingale Lane sites (outlined in the plans attached at Appendix 1) 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. The sites are no longer required to be used as garages or a car park. Most of the garages are sitting vacant and have fallen into a poor condition and the car park is under-used.
- 6.22. The Nightingale Lane site consists of unsightly garages which require maintenance attention to bring them back into a good condition. Not all of the garages are leased therefore this land is currently being underutilised. The appropriation of the land and the subsequent development will enable the Council to regenerate the site with attractive housing and help to meet the demand for affordable homes in the ward.
- 6.23. The St Mary's Close site is secluded and has attracted anti-social behaviour. This has also caused security risks to surrounding residents, which the Council would like to alleviate. The appropriation of the land and the subsequent development will enable the Council to implement security measure such as lighting and design out hidden corners. In addition, the car park is under-utilised, and regeneration of the site will help to meet the demand for affordable homes in the ward.
- 6.24. This report also seeks Cabinet approval to use the Council's powers under Section 203 of the HPA 2016 to override easements and other rights of neighbouring properties infringed upon by St Mary's Close and Nightingale Lane developments. The types of rights that can be overridden by Section 203 of the HPA 2016 are any easements, liberty, privilege, right or advantage annexed to land and adversely affecting other land. An easement is a right of light, or right of way or interest in land which entitles a neighbouring landowner to enjoy such rights over the adjoining 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 effect on 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.
- 6.25. It is not believed that the potential infringement of the third-party rights outlined here over the St Mary's Close and Nightingale Lane sites are a breach of human rights, being rights to private and family life. The engagement event on 29 October 2019 and the formal planning consultation process that took place, did not raise any concerns that there were possible infringements of third-party rights, including rights of light. Furthermore, if an injunction is sought by a third party for breach of a right, then if successfully claimed, the right will be converted into a right of compensation for loss of that right.
- 6.26. Based on the feedback following the public consultation event, there have not been any claims that any third-party rights would be infringed by the development. However, should any claim be made for any infringement of right to light, potential costs are set out in the exempt Appendix 2.
- 6.27. Regarding the value of potential compensation for the loss of third-party rights of access and or enjoyment, having undertaken the necessary checks against neighbouring properties, none have easements in relation to the two sites. Furthermore, no neighbouring properties have come forward asserting any rights of access or enjoyment. Based on these circumstances, it is unlikely that there will be any claims, but the level of compensation is unquantifiable until such a claim is made although it is not likely to be so significant as to impact on the scheme's viability.

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 Borough 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 1,000 new council homes at council rents by 2022”*. 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

Legal

Appropriation under Section 122 of the Local Government Act 1972

- 8.1. The Council ‘holds’ the two sites for housing purposes. In order to override any third-party rights affecting the two sites, the Council will need to appropriate each of the two sites for planning purposes. The Council may appropriate land from housing purposes to planning purposes under Section 122 of the Local Government Act 1972 and in order to engage Section 203 HPA 2016. 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 no longer required for the purpose for which it is held immediately before the appropriation.”

- 8.2. The key procedural points are as follows:
 - a) The land must already belong to the council
 - b) The land must no longer be required for the purpose for which it is currently appropriated; and
 - c) The purpose for which the council is appropriating must be authorised by statute
- 8.3. 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.
- 8.4. In applying the requirements (a) – (c) of Section 122 LGA 1972 set out above:
 - a) the site is Council owned land;
 - b) the site is no longer required for housing purposes; and
 - c) the Council is seeking to appropriate the land for the statutory purpose of planning.
- 8.5. The site does not contain open space.

Section 203 of the Housing and Planning Act 2016

- 8.6. By appropriating the land for planning purposes under Section 122 of the LGA 1972, the Council is therefore able to engage the powers contained in Section 203 of the HPA 2016.
- 8.7. Section 203 states a person 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 as defined 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.

8.8. Looking at the requirements of Section 203 above,

- a) planning permissions have been granted for both developments;
- b) it is recommended in 2.1 (i) of this report that the two sites be appropriated for planning purposes under the Section 122 of the LGA 1972;
- 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 where '*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 as outlined in this report.

8.9. With regards to recommendations (3.1.2) and (3.1.4) the Council will be seeking to appropriate both the St Mary's Close and Nightingale Lane sites following practical completion of the developments back for housing purposes and into the HRA. Recommendations (3.1.5) may take place under Section 19 (1) of the Housing Act 1985 which states a local housing authority may 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.

8.10. The contract which this report relates to has been procured by direct call-off under the LCP Major Works Framework 2019 ("the Framework").

8.11. The Framework was procured in accordance with the Public Contracts Regulations 2015 (as amended).

8.12. The rules of the Framework permit a direct award of contracts up to £2.5 million.

8.13. The Assistant Director of Corporate Governance sees no legal reasons preventing Cabinet from approving the recommendations in the report.

Procurement

8.14. Strategic Procurement notes the update on the Housing Delivery Programme and recommendations within section 3.1 (3.1.2-3.1.5) of this report; however, comments are not applicable for property and land transactions as they sit outside of the Procurement Contract Regulations.

8.15. Strategic Procurement support the award of this contract in accordance with clause 9.07.2 of the Contract Standing Orders as the contract has been awarded by way of a call off from the LCP Framework estimated value of £25,000 or more.

Finance

8.16. The St. Mary's close and Nightingale lane sites will deliver 5 units of social rented homes on completion at a total construction contract value of £1.34m.

8.17. The total cost to completion of this scheme is £1.61m which includes the pre -construction cost.

8.18. The preferred contractor was selected following an assessment of the submitted tender and based on a 60:40 quality/cost assessment.

8.19. There is adequate provision within the HRA new build budget for the reported cost.

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

Equality

8.21. 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.

8.22. 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.

8.23. The proposed decision relates to new build works to provide five new Council rented homes at Nightingale Lane and St Mary's Close. The decision will increase the supply of homes which are genuinely affordable 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, as detailed in the Equalities Impact Assessment of the council's Draft Homelessness Strategy. As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

8.24. 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.

9. Use of appendices

Appendix 1 – Plans - Red line St Mary's Close and Nightingale Lane

Appendix 2 - Exempt – financial information

10. Local Government (Access to Information) Act 1985

10.1. Appendix 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).