

Report for: **Cabinet 19 January 2021**
Title: **Approval of construction contract and land appropriation at Tudor Close N6 5PR**
Report
Authorised by: **David Joyce, Director of Housing, Regeneration and Planning**
Lead Officer: **Robbie Erbmann, Assistant Director for Housing**
Ward(s) affected: **Highgate**
Report for Key/
Non-Key Decision: **Key Decision**

1. Describe the issue under consideration

- 1.1 This report seeks Cabinet's approval to develop a new-build scheme in Highgate on Council land, at 1- 42 Tudor Close N6 5PR, to build a three-storey block of flats with six new homes at social housing rent. Appendix 1 redline boundary provides the footprint of land and the proposed site layout shows, the accommodation schedule of 1x1 bedrooms for 2 persons, 2x2 bedrooms for 3 persons, 3x2 bedroom for 4 persons, equates to six new habitable homes for twenty people.
- 1.2 The development will be built adjacent to the existing social housing block, 1-18 Tudor Close, there are 42 existing residents that include six leaseholders. This scheme formed part of the ex-Sanctuary Housing Group site, brought back in-house to be delivered.
- 1.3 The consultation held with the residents on the 10 February 2020, for the build new, generated a need to review the design. The recommended development has been substantially redesigned following consultation and engagement: it now retains 22 of the 38 car parking spaces, including the two existing disabled bays, and incorporates an additional disabled bay; and it minimises any overlooking of neighbouring gardens is minimised. The development will also create an inclusive community garden and a safer environment for existing and new residents.
- 1.4 If approved, this will be the tenth housing development directly delivered by the Council to start on site, and the fifteenth in the overall Council housing delivery programme.
- 1.5 In order to achieve this, Cabinet is being asked to agree that the Council should appropriate the land, first for planning purposes and then on completion for housing purposes; and in light of a formal tender process to award a construction contract to a local contractor, NFC Homes Limited.

2. Cabinet Member Introduction

- 2.1. I'm pleased to recommend that Cabinet approves building another six new Council homes, one of which will be fully accessible for wheelchair users. With this decision, by the end of next month we'll have 359 new Council homes under construction across 15 sites in eleven wards. The scale of this achievement, and the transformative impact it will have on thousands of people, should not be underestimated.
- 2.2. This scheme demonstrates our commitment to involving the community in the design of our new generation of Haringey Council homes. This block and its surrounding landscaping were carefully redesigned and improved thanks to the input of local communities.

3. Recommendations

- 3.1. It is recommended that Cabinet:

- 3.1.1. Considers the responses both to the consultation carried out on this proposed scheme in line with section 105 of the Housing Act 1985 and to the wider community engagement (as set out in paragraphs 6.5 to 6.25).
- 3.1.2. Approves the appropriation of the site at Tudor Close (edged red on the plan attached at Appendix 1) from housing purposes to 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, for the purpose of carrying out development as set out in part 6 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 Tudor Close development, under planning permission Ref: HGY/2020/1460.
- 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 site at Tudor Close (edged red on the plan 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 24 November 2022.
- 3.1.6. Approves the appointment of NFC Homes Limited to undertake the new build works to provide a total of six Council rented homes at Tudor Close for a total contract sum of £1,701,067.00 and to approve the client contingency sum set out in the exempt part of the report.

4. Reasons for decisions

- 4.1. Cabinet included the site at Tudor Close in the Council housing delivery programme on 13 November 2018 with the intention of directly delivering homes on the site. This scheme has subsequently been granted planning consent and is ready to progress to construction.
- 4.2. The use of powers at section 122 of the Local Government Act 1972 (LGA) allowing the Council to utilise the powers at section 203 Housing and Planning Act 2016 (HPA) on the site would also overcome potentially enforceable third-party rights that may prevent the construction of the development. The power under section 203 HPA 2016 will instead convert those rights into a right for compensation for the loss of that right.
- 4.3. To appropriate the land from planning purposes for housing purposes on completion of the development will enable the Council to then offer these homes for rent thereby helping to meet the demand for affordable housing in the borough.
- 4.4. NFC Homes Limited has been identified to undertake these works by a formal procurement process.

5. Alternative options considered

- 5.1. It would be possible not to develop this site for housing purposes. This option was rejected as it would not support the Council's commitment to deliver a new generation of Council homes.
- 5.2. It would be possible to proceed to development without appropriation of the land as described 3.1.2 and 3.1.3. This option was rejected because it would risk the development being delayed in the event that neighbouring residents sought injunctions against it, and because our communities' need for Council homes is so urgent.

- 5.3. 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.

6. Background information

Tudor Close development site

- 6.1. As shown in the red line boundary plan (Appendix 1), the site is located to the east of Archway Road in the Highgate ward. The site consists of 38 parking bays adjacent to a three-story block of flats owned by the Council.
- 6.2. This land is Council-owned land held in the Housing Revenue Account (HRA).
- 6.3. On 13 November 2018, Cabinet included the site at Tudor Close N6 5PR, edged red on the plan at Appendix 1 (Tudor Close), in the Council housing delivery programme in order to determine its feasibility and capacity for the delivery of new Council homes and then, if appropriate, its progression to a planning application.
- 6.4. Designs have been developed that will deliver five two-bedroom flats and one, one-bed flat that is fully accessible for wheelchair-users. All will be let at Council rent. The Planning Authority gave consent to these designs on 14 September 2020.

Engagement and Consultation

- 6.5. Under section 105 of the Housing Act 1985 landlord local authorities must formally consult their tenants when a decision is proposed that affects council housing or amenities enjoyed in relation to council housing.
- 6.6. The Council consulted with both secure tenants and leaseholders. The consultation ran from 31 January 2020 to 8 March 2020. An information pack setting out the proposed changes including a questionnaire was delivered to each address at Tudor Close.
- 6.7. The scheme as originally proposed would have removed 21 of the 38 existing parking bays at Tudor Close. Other proposed changes include the provision of two disabled parking spaces, hard/soft landscaping, a communal refuse/recycling store and cycle parking facilities.
- 6.8. Residents had the option to respond via post (in which case a freepost envelope was enclosed), by submitting a response to the questionnaire online or by emailing their views to a dedicated email address.
- 6.9. Of the 42 homes that received the section 105 Consultation Pack, five households formally responded.
- 6.10. Three respondents were aged 45–64, one was over the age of 65, and the other stated that they preferred not to say. One of the respondents stated they have a long-term disability.
- 6.11. Of the five responses, all said they used the car park. Four used it daily including one minicab driver and one for family/friends/carers. Residents stated that the removal of the parking bays breached their tenancy agreement, would affect car insurance security, and impact on health. Residents stated that they had used the car park for many years, and that it will be difficult and costly finding anywhere else to park locally, particularly for pensioners. It was also stated that there should be fewer disabled bays and that there

should be parking bays lining the entrance.

- 6.12. A resident engagement evening was held on 10 February 2020 where information about the proposals was presented and members of the Project Team were at hand to assist and answer questions. The engagement event was open not only to tenants and leaseholders included in the statutory s105 consultation, but also to the wider community including residents of nearby freehold properties.
- 6.13. Following the consultation event on 10 February 2020, there various queries and objection of the scheme, during the planning process 42 objections were received including from freeholder properties located on the Langdon Park Road about overlooking of gardens, loss of light, and loss of car parking spaces.
- 6.14. The Council commissioned a parking survey. This indicated low levels of usage. In addition, the survey noted that although there are 42 car parking spaces marked out on the Site, these are not wide enough for standard vehicles. Therefore, the actual parking capacity is for 38 vehicles. The survey also indicated that the adjoining streets, which are covered by a Controlled Parking Zone, have capacity, albeit limited. Existing residents will be able to apply for a permit to park on-street, but residents of the proposed new homes will not be permitted to do so in accordance with local planning policy.
- 6.15. It should also be noted that Tudor Close is reasonably accessible to local services and amenities including bus services and shops on Archway Road, within a short walking distance. Although the site has a PTAL value of 2/3, considered 'poor' to 'moderate' access to public transport services, it is recognised that the site is relatively close to an area of PTAL value 5 - 'very good', and that Highgate Station is only just outside of the PTAL walk distance to be included within the PTAL value (12 minute walk).
- 6.16. Cycle storage facilities will be provided for residents of the proposed homes and new communal cycle storage facilities will be provided on-site for existing residents to assist in mitigating the loss of parking and encourage more sustainable means of travel, in accordance with planning policy.
- 6.17. It should be noted that the removal of the parking spaces would not breach existing tenancy agreements.
- 6.18. Following the consultation and having regard to the issues raised, the Council has considered a number of changes to the design of the scheme including increasing the number of parking spaces from 17 to 22 bays, inclusive of the one additional disabled bay and enhancing the landscaping proposals. Effectively this ensures that only 16 existing car parking spaces are removed at Tudor Close.
- 6.19. The Council is also liaising with Homes for Haringey to seek to allocate and manage the future use of the car park for the benefit of existing residents.
- 6.20. Having regard to level of response and the specific issues raised, it is considered that the loss of parking space at Tudor Close would not harm the amenities of existing residents nor warrant the proposed delivery new homes on-site from proceeding.
- 6.21. In response to the feedback of residents of neighbouring properties outside the scope of statutory consultation, the scheme was redesigned to move the building further from neighbouring gardens. In addition, the corner balconies are now screened to the north to prevent overlooking of the gardens. The diagram of the change was shared with the affected freeholders Langdon Road.
- 6.22. The Council have undertaken the necessary checks to assess the value of potential compensation for the loss of third-party rights of access and or enjoyment.

- 6.23. The other proposed changes, including comprehensive landscaping and re-provision of refuse/recycling facilities will secure a significant improvement in the environmental quality and security of the site at Tudor Close.
- 6.24. The scheme was submitted to planning on the 26 June 2020 and residents were once again formally consulted, this time by the Planning Authority, as part of this process.
- 6.25. The Planning Authority considered feedback from the consultation. Planning approval of the scheme was granted on 14 September 2020.

The Build Contract

- 6.26. This report is seeking final approval of the construction contract to enable the new build works to commence.
- 6.27. The housing scheme has 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 technical design and new build works; it is currently anticipated that the contract period will be 18 months.
- 6.28. The project tender process involved conducting an expression of interest exercises via the LCP MW 2019 framework in June 2020. Due to minimal interest received from the suppliers on the framework, it was decided that a direct appointment with one of the interested parties on the framework was the most appropriate route.
- 6.29. The selected contractor, NFC Homes Limited, which is based locally, was asked to respond to a 100% price assessment. Their tender return response was received on 6 October 2020.
- 6.30. Cost was evaluated independently by the Council's Cost Consultant to ensure value for money in line with current market trends.
- 6.31. NFC Homes Limited total contract sum is £1,701,067.00. Considering the size, scope, complexity, and abnormalities specific to this project, the Project Cost Consultant has concluded that the tender submitted by NFC Homes Limited offers reasonable value for money in the current market.
- 6.32. The recommendation is therefore to award the contract to NFC Homes Limited.
- 6.33. 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.
- 6.34. The tender assumes signing of the contract and site possession by 1 March 2021, as the tender offer remains open for 13 weeks from the return date.

Appropriation of Land

- 6.35. This report seeks approval to appropriate the site, Tudor Close (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.
- 6.36. The site currently forms part of a car park within the Tudor Close estate. Parking is restricted to the existing residents.
- 6.37. The site has been known to attract anti-social behaviour due to the cul-de-sac access from Langdon Park Road. The appropriation of the land and the subsequent development will enable the Council to implement security measures such as path lighting to the communal gardens to help reduce crime. In addition, the landscape strategy proposed

will develop an inclusive community garden and safer environment for the existing and new residents.

- 6.38. Following the consultation event on 10 February 2020, some of the freeholder properties located on the Langdon Park Road feedback their concerns regarding the distance of the new development to their rear gardens. Based on this feedback, the proposed building has been moved further away to increase the separation distance from the freeholders' rear garden. In addition, the corner balconies are now screened to the north to prevent overlooking of the gardens.
- 6.39. The Council have undertaken the necessary checks to assess the value of potential compensation for the loss of third-party rights of access and or enjoyment. Based on concerns raised by residents due to the loss of car parking, the Council have decided to re-provide 22 parking bays.
- 6.40. Section 203 of the Housing and Planning Act 2016 (HPA) gives councils powers to override 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.
- 6.41. The use of the Council's powers under section 203 of the HPA 2016 for the development site would also cover potentially enforceable third-party rights that could delay or prevent the construction of the development. These powers will instead convert those rights into rights for compensation for the loss of that right. The Council recognises the potential rights of third parties and will pay compensation where a legal basis for such payments is established.
- 6.42. To appropriate the land at this development site for housing purposes on completion of the development will enable the Council to then offer these homes for rent thereby helping to meet the urgent demand for affordable housing in the borough.
- 6.43. 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 the Tudor Close development.
- 6.44. A planning application by the Council was approved on 14 September 2020 allowing the Council to deliver six new Council rented homes on the site. The site currently comprises 42 car parking bays, but only 38 met the criteria to be deemed as parking bay that is held for housing purposes within the Housing and Revenue Account.
- 6.45. There were 42 objections received from the existing residents at Tudor Close and wider local community of freeholders from Langdon Road at Northwood. The main objection was overlooking, loss of light and loss of car parking spaces. In response to the previous consultation with the residents, the Architect redesign the new building to increase the distance of separation from the rear gardens of the freeholders at Langdon Road. The diagram of the change was shared with the affected freeholders Langdon Road.
- 6.46. The Right of Light survey shows the scheme is a low risk and all readings of all windows affected show that the proposals have zero effect on all properties other than the ground floor windows of the Tudor Close homes and two on the first floor. All these windows face the proposed scheme and all remain within acceptable guidelines.
- 6.47. The Report on Title indicates that no part of the land register is common land and nor is it subject to third party rights. There are no public rights of way which abut on or cross the property or any pending application to record any. There have not been any claims that any third-party rights would be infringement by the development.

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 Site for housing purposes. In order to override any third-party rights affecting the Site, the Council will need to rely on section 203 of HPA 2016 but must first appropriate the Site for planning purposes. The Council may appropriate land from housing purposes to planning purposes under Section 122 of the Local Government Act 1972.
- 8.2. Under Section 122 LGA 1972, 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.
- 8.3. Section 122 LGA 1972 also 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. The Site does not contain open space
- 8.5. **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 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. The Council’s satisfies the requirements of Section 203 for the following reasons,
 - a) planning permission has been granted for the Development on 29 September 2020;
 - b) it is recommended in 3.1.2 of this report that the land 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 under Section 226(1) of the Town and Country Planning Act 1990. This provides that the Council can do so if it ‘.thinks 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'. The Council considers that the development will lead to an improvement in the economic, social or environmental wellbeing of the Site and surrounding area as outlined in this report.

Section 19 (1) of the Housing Act 1985

- 8.9. The Council will be seeking to appropriate the Site following practical completion of the development back 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.

Section 105 Consultation

- 8.10. Under Section 105 of the Housing Act 1985 the Council is required to carry out consultation with those secure tenants who are likely to be substantially affected by a matter of housing management. The Council has carried out a consultation with regards the Council's proposals for the car park area included within this Site. Prior to making any decision the Cabinet must consider the representations made by those consulted on those proposals.

The Build Contract

- 8.11. The contract which this report relates to has been procured by direct call-off under the LCP Major Works Framework 2019 ("the Framework").
- 8.12. The Framework was procured in accordance with the Public Contracts Regulations 2015 (as amended).
- 8.13. The rules of the Framework permit a direct award of contracts up to £2.5 million.
- 8.14. The Assistant Director of Corporate Governance sees no legal reasons preventing Cabinet from approving the recommendations in the report.

Procurement

- 8.15. 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.
- 8.16. 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

- 8.17. The scheme will deliver 6 units of social rented homes on completion at a total construction contract value of £1,701,067.
- 8.18. The preferred contractor was directly appointed, due to limited interest, following an assessment by the project team's cost consultant.
- 8.19. There is adequate provision within the HRA new build/acquisition 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 six new Council rented homes at Tudor Close, N17. The decision will increase the supply of Council rented 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, 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

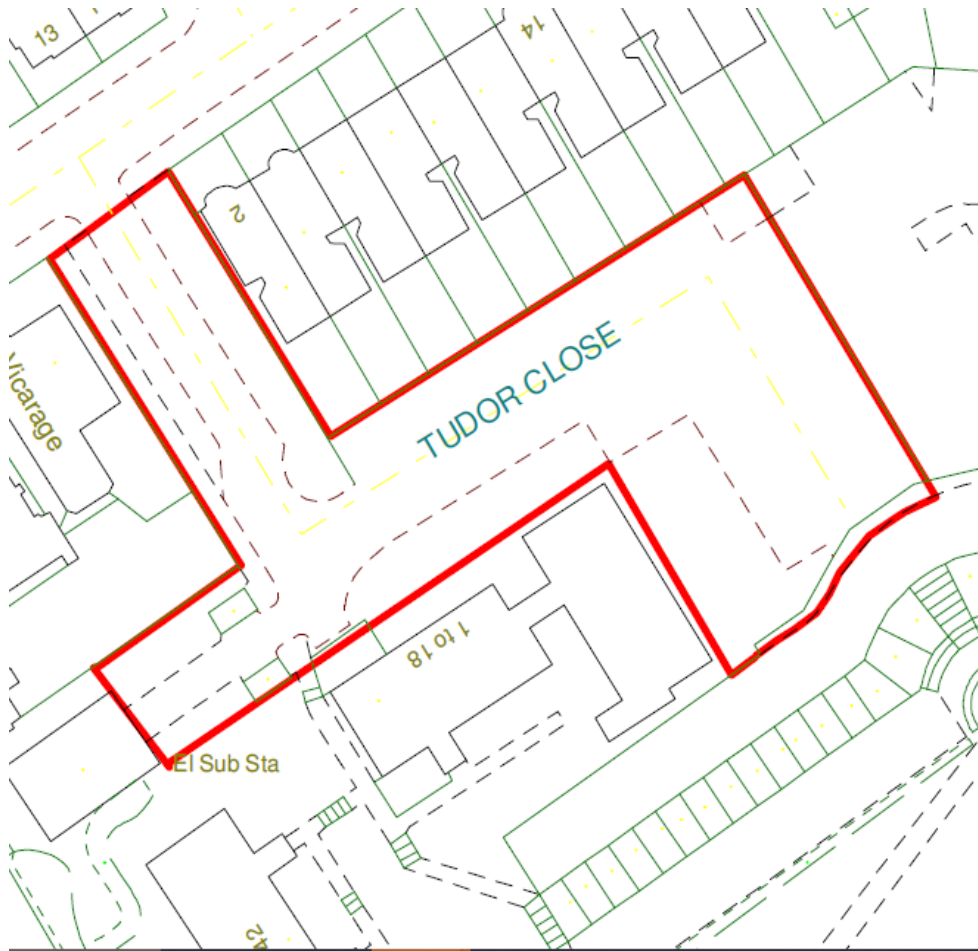
Appendix 1 – Red line boundaries and proposed site layout -Tudor Close.

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).

Appendix 1 - Tudor Close – Red Line Boundary



Proposed site layout

