

Report for: **Cabinet 19 January 2021**  
Title: **Approval of a construction contract for new Council homes at Scales Road N17**  
Report  
Authorised by: **David Joyce, Director of Housing, Regeneration and Planning**  
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 four new Council homes for Council rent on Council land: three two-bedroom flats, including one that is fully accessible for wheelchair-users, and one three-bedroom flat. The recommended development has received positive feedback from the community and was given planning permission on 29 September 2020.
- 1.2 In order to facilitate this, Cabinet is being asked to approve use of the Council's powers to appropriate the land for planning purposes and to override any easements.
- 1.3 Cabinet is asked in light of a formal procurement exercise to approve the appointment of a local contractor, NFC Homes Limited, to deliver these new Council homes by converting a vacant shop unit on the ground floor of an existing Council block and building a new block of two flats on adjoining land currently occupied by dilapidated pram sheds.

## **2. Cabinet Member Introduction**

- 2.1. I'm pleased to recommend that Cabinet approves building another four new Council homes, one of which will be fully accessible for wheelchair users. With that 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 after more than 40 years during which no new Council homes were built in Haringey.
- 2.2. This scheme demonstrates our commitment to building a new generation of Haringey Council homes that are designed to the highest standards. This development was shortlisted for the New London Architecture prize, and as well as providing a secure future for four families it will significantly improve the appearance and security of the area for existing residents.

## **3. Recommendation**

- 3.1. It is recommended that Cabinet:
  - 3.1.1 Approves the appointment of NFC Homes Limited to undertake the new build works to provide a total of four Council rented homes at Scales Road for a total contract sum of £841,813.00 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 Scales Road (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 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 6.22 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 Scales Road development, under planning permission Ref: HGY/2020/1809.
- 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 Scales Road (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 March 2022.

#### **4. Reasons for decisions**

- 4.1. On 9 July 2019 Cabinet included the land at Scales Road in the Council's housing delivery programme. The development scheme has subsequently been granted planning consent and is ready to progress to construction. This report therefore marks the third, and final, Member decision to develop on this site.
- 4.2. Following a formal tender process, NFC Homes Limited has been identified to undertake these works.
- 4.3. The appropriation of the land at Scales Road ('the Site') for planning purposes is required as it will allow the Council to use the powers contained in Section 203 of the Housing and Planning Act 2016 ('HPA') to override easements and other rights of neighbouring properties. This will prevent injunctions that could delay or prevent the Council's proposed development. Section 203 HPA converts the right to seek an injunction into a right to compensation. Engagement with the community has not given rise to any suggestions that third-party rights would be infringed by the development; and it is believed that any potential infringement of third-party rights would not give rise to any breach of rights to private and family life. 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 four new Council homes at Council rent.
- 4.4. The new development at Scales Road will also allow the Council to secure the boundary of the Site and improve security for new and existing residents, alleviating the anti-social behaviour currently attracted to the Site by the dilapidated pram sheds.

#### **5. Alternative options considered**

- 5.1. It would be possible not to develop this Site 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 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. 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 would prevent the Council from being able let these homes on secure tenancies at Council rent.

## **6. Background information**

### **Scales Road development site**

- 6.1. As shown in the plan of the Site in Appendix 1, the Site is located to the east of Tottenham High Road in Tottenham Hale ward. The Site consists of a vacant shop unit within the block of flats know as 14-20 Scales Road and a small plot of scruffy grass and dilapidated pram sheds sitting adjacent to this building. The plot of grass is underused and generally has attracted dog walkers or antisocial behaviour. The Site historically has also been used by contractors as a space for welfare units or skips. Feedback following resident engagement has been that residents would like to see this piece of land and the vacant shop better utilised.
- 6.2. This land is Council-owned land held in the HRA.
- 6.3. On 7 July 2019, Cabinet approved the inclusion of Scales Road into the Council's housing delivery programme in order to determine its feasibility and capacity for the delivery of new homes and then, if appropriate, progression through to planning consent.
- 6.4. Designs have been developed that will deliver four Council homes for Council rents: three two-bedroom flats, including one that is fully accessible for wheelchair-users, and one three-bedroom flat at Scales Road.
- 6.5. An initial resident engagement event was held on 3 March 2020 at the Circular Road Community Hub. A second remote engagement period, due to COVID restrictions, took place from the 31 May 2020 for four-weeks. The proposals were positively received by Members and local residents and no major concerns were raised.
- 6.6. It is noted that engagements regarding S105 obligations were not applicable for this Site.
- 6.7. The schemes were submitted to the Planning Authority in July 2020 and residents were formally consulted as part of this process. Planning approval of the scheme was granted on the 29 September 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 scheme at Scales Road has been designed up to stage 4 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 some elements of the technical

design and new build works; it is currently anticipated that the contract period will be 12 months.

- 6.10. The project tender process involved conducting an expression of interest exercise via the LCP MW 2019 framework, in June 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, NFC Homes Limited, which is based locally, was asked to respond to a 100% price assessment. They responded with their proposal on 28 October 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. Cost was evaluated independently by the Project Team's Cost Consultant to ensure value for money in line with current market trends.
- 6.13. NFC Homes Limited total contract sum is £841,813.00. 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 value for money in the current market.
- 6.14. The recommendation is therefore to award the contract to NFC Homes Limited.
- 6.15. 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.
- 6.16. The tender assumes signing of the contract and site possession by 29 January 2021, as the tender offer remains open for 13 weeks from the return date.

#### **Appropriation of land**

- 6.17. This report seeks approval to appropriate the Site, Scales Road (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.
- 6.18. The Site consists of a plot of scruffy grass which is used by dog owners and some dilapidated pram sheds towards the back of the Site. Around the back of the Site, behind the pram sheds, there is a gate for residents from the existing block at Scales Road to use to access the communal gardens. The secluded area around the pram sheds and access gate has historically attracted anti-social behaviour. In addition, the project consists of a refurbishment element, the conversion of a vacant retail unit into residential. This unit recently has had problems with squatters and attracted anti-social behaviour. 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 levels but also bring the vacant shop unit back into use as housing.
- 6.19. 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 Scales Road development. 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.

- 6.20. It is not believed that the potential infringement of the third-party rights outlined here over the Site is in any way a breach of human rights, being rights to private and family life. The right of way and estate accessways which apply to the Site will be maintained for all neighbouring properties that may use the Site as a right to access for their properties. The engagement events on 3 March 2020, over June 2020, and during the formal planning consultation, 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.
- 6.21. 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.
- 6.22. 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 Site. 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 to 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 appropriating the Sites for planning purposes. The Council may appropriate land from housing purposes to planning purposes under Section 122 of the Local Government Act 1972. Under Section 122

*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. 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).
- 8.3. The Site does not contain open space.

#### **Section 203 of the Housing and Planning Act 2016**

- 8.4. 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.

- 8.5. 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.
- 8.6. 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 2.1 (i) 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 areas as outlined in this report.
- 8.7. 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 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.
- 8.8. The contract which this report relates to has been procured by direct call-off under the LCP Major Works Framework 2019 ("the Framework").
- 8.9. The Framework was procured in accordance with the Public Contracts Regulations 2015 (as amended).
- 8.10. The rules of the Framework permit a direct award of contracts up to £2.5 million.
- 8.11. The Assistant Director of Corporate Governance sees no legal reasons preventing Cabinet from approving the recommendations in the report.

### **Procurement**

- 8.12. 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.
- 8.13. 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**

- 8.14. The Scales road site will deliver 4 units of social rented homes on completion at a total construction contract value £841,813.
- 8.15. The preferred contractor was directly appointed, due to limited interest, following an assessment by the project team's cost consultant.
- 8.16. There is adequate provision within the HRA new build budget for the reported cost.
- 8.17. Further finance comments are contained in the exempt report.

## **Equality**

- 8.1. 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.
- 8.2. 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.
- 8.3. The proposed decision relates to new build works to provide four new Council rented homes at Scales Road, 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.
- 8.4. 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 Scales Road.

Appendix 2- Exempt – financial information

## **10. Local Government (Access to Information) Act 1985**

- 10.1. 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 they contain information relating to the financial or business affairs of any particular person (including the authority holding that information).