

Report for: **Cabinet 9th February 2021**
Title: **Approval of housing construction contract at Antill Road N15**
Report
Authorised by **David Joyce, Director of Housing, Regeneration and Planning**
Lead Officer: **Robbie Erbmann, Assistant Director for Housing**
Ward(s) affected: **Tottenham Green**
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 consultation with local residents, to build a new three-bedroom Council home for Council rent on Council land that is currently in use for car parking.
- 1.2 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 locally-based firm, Cuttle Construction Limited.

2. Cabinet Member Introduction

- 2.1. I'm pleased to recommend that Cabinet approves building another new Council home. With that approval, building work will be underway by the end of this month on 363 Council homes right across the borough, on 17 sites in ten different wards.
- 2.2. At a time when Covid is exposing the deep harm that poor housing inflicts, this new three-bedroom Council home will provide a secure future for a Haringey family.
- 2.3. This scheme demonstrates our commitment to building a new generation of Haringey Council homes that are designed to the highest standards. This house is a contemporary interpretation of the neighbouring houses, and it uses high quality, durable materials that will stand the test of time.

3. Recommendation

- 3.1. It is recommended that Cabinet:
 - 3.1.1 Considers the responses to the consultation carried out on this proposed scheme in line with section 105 of the Housing Act 1985, as set out in paragraphs 6.5 to 6.8 of this report.
 - 3.1.2 Approves the appointment of Cuttle Construction Limited to undertake the new build works to provide a total of one Council rented home at Antill Road for a total contract sum of £274,202 and to approve the client contingency sum set out in the exempt part of the report.
 - 3.1.3 Approves the appropriation of the land at Antill 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 part 6 of this report.
 - 3.1.4 Approves the use of the Council's powers under Section 203 of the Housing and Planning Act 2016 to override easements and other rights of neighbouring properties infringed upon by the Antill Road development, under planning

permission Ref: HGY/2020/1480.

- 3.1.5 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.
- 3.1.6 Approves the appropriation of the land at Antill 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.

4. Reasons for decisions

- 4.1. The land at Antill Road 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 is ready to progress to construction. This report therefore marks the third, and final, Members' decision to develop on this site.
- 4.2. Cuttle Construction Limited has been identified by a formal tender process 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 one new Council home at Council rent.
- 4.4. The site proposal will improve security for new and existing residents and alleviate potential anti-social behaviour attracted to the site by an open unsecured car park.

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 competitive tender through the Dynamic Purchasing System (DPS) JCT Design & Build 2016 amendments, the recommended route for a contract of this value. An alternative option would have been to do a direct appointment, but this option was rejected due to the estimated contract value of the scheme and to give opportunities for local small to medium size contractors to submit a tender.
- 5.3. The Council could continue with the scheme without appropriating the site for planning purposes, but this would risk the proposed development being delayed or stopped by potential third-party claims. By utilising the powers under Section 203 of the Housing and Planning Act 2016 (HPA 2016), those who benefit from third party rights will not be able to seek an injunction since those rights or easements that are overridden are converted into a claim for compensation only. The Council recognises the potential rights of third parties and will pay compensation where a legal basis for such payments is established. The housing delivery team actively engaged with local residents about the development of this site as they proceeded through the feasibility and design stages and any comments or objections raised were taken into consideration by Planning Committee in reaching its decision.

- 5.4. The Council could decide not to appropriate the land 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

Antill Road development site

- 6.1. As shown in the plan in Appendix 1, the site lies between Seven Sisters and Tottenham Hale Stations. It is located at the southern end of Antill Road, between Hanover Road and Cunningham Road, and between the junctions with Tynemouth Toad and Broad Lane. Antill Road is a predominantly residential street with a mix of traditional Victorian and Edwardian terraced houses. The only variations are new three-storey residential blocks to the north eastern and southern ends of Antill Road, The Holy Trinity Church at the junction with Springfield Road, and the Transport for London Victoria Line ventilation duct infrastructure at the junction with Antill Road and Tynemouth Road.
- 6.2. This land is Council-owned land held in the HRA.
- 6.3. In July 2019, Cabinet approved the inclusion of Antill Road into the Council's housing delivery programme to determine its feasibility and capacity for the delivery of new homes and then, if appropriate, their progression through to planning consent.
- 6.4. Designs have been developed and approved that will deliver one three-bedroom, five persons house for Council rent at Antill Road.

Engagement and Consultation

- 6.5. An initial resident engagement event was held on 17th February 2020 at 1-39 Sophia House N15. The proposals were positively received by Members and some residents. Some residents raised concerns about loss of parking stating that public parking is limited in the area.
- 6.6. Obligations to consult in line with section 105 of the Housing Act 1985 were applicable for this site. The section 105 consultation period commenced on 31st January 2020 and ran until 8th March 2020. Of the 40 homes that received the section 105 pack inviting responses, six households formally responded. Of those six responses, four households stated that they used the car park and two that they did not use it. Of the four household who stated that they use the parking spaces, two use it daily, one uses it occasionally, and another household stated that family, friends and carers use it when visiting.
- 6.7. Whilst the loss of parking at Antill Road will have some limited impact on parking provision locally, it should be noted that the site is very accessible to local services and amenities including public transport. The site has a rating of PTAL 6a and shops are within walking distance.
- 6.8. The scheme was submitted to planning on 18th June 2020 and residents were again formally consulted as part of this process. Planning approval of the scheme was granted after considering responses to that consultation on the 17th September 2020.

The Build Contract

- 6.9. This report is seeking final approval of the construction contract to enable the new build works to commence.
- 6.10. The housing scheme at Antill Road 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 detailed technical design and new build works. It is currently anticipated that the contract period will be 12 months.

- 6.11. The project tender process involved conducting an expression of interest exercise via the DPS framework in October 2020. Due to the number of interests received from several build contractors, a competitive tender was considered the preferred route for the appointment of a principle contractor.
- 6.12. Bidders were asked to respond to a 60% quality 40% price assessment. The winning contractor, Cuttle Construction responded with their proposal on 25 November 2020. A value for money report of the recommended winning tender was carried out by the Employer's Agent's quantity surveyor. Details of works cost received from all bidders has been provided in Appendix 2, which is exempt from publication due to the commercially sensitive nature of this information.
- 6.13. The quality questions were evaluated by Haringey's project team and the architect that designed out the scheme to stage 3 of RIBA Plan of Works 2019. The project team's Employers Agent have been assigned to independently evaluate the cost to ensure value for money in line with current market trends.
- 6.14. Cuttle Construction Limited's contract sum is £274,202. Considering the size, scope, complexity, and abnormalities specific to this project, the Project Cost Consultant has concluded that this offers value for money in the current market.
- 6.15. The recommendation is therefore to award the contract to Cuttle Construction Limited as set out in the exempt report Appendix 2.
- 6.16. The contract is to be awarded to include new build works, site establishments, design works, site enabling, management costs, overheads and profits and there is a defects liability period of 12 months.
- 6.17. The tender assumes signing of the contract and site possession by 26th February 2021, to allow start on site by Q4 2020 as the tender offer remains open for 13 weeks from the return date.

Appropriation of land

- 6.18. This report seeks approval to appropriate the site, Antill 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.
- 6.19. The site is a noticeable gap in a well-established street. The initial assessment of the site recommended a single dwelling house will best respond to the surrounding constraints and the existing streetscape. The challenge is to introduce a new structure that will be sympathetic to the existing streetscape. The appropriation of the land and the subsequent development will enable the Council to develop much needed housing in the London Borough of Haringey.
- 6.20. 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 Antill 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.

- 6.21. It is not believed that the potential infringement of the third-party rights outlined here over the Site is a breach of human rights, being rights to private and family life. The right of light on adjoining and neighbouring properties will be managed through rights to light insurance to protect developers from the risk of possible future claims resulting from infringements of a right of light. The engagement events on 17th February 2020, which is the formal planning consultation process, 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.
- 6.22. 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.
- 6.23. 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 Council can appropriate under Section 122 LGA 1972 as:

- 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.

8.4. The Site does not contain open space.

Section 203 of the Housing and Planning Act 2016

8.5. 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.

8.6. 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.

8.7. The Council satisfies the requirements of Section 203 for the following reasons,

- a) planning permission has been granted for the Development on 17th 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.

8.8. 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.

8.9. The contract which this report relates to has been procured under the DPS (Dynamic Purchasing System).

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

8.11. The Head of Legal and Governance (Monitoring Officer) sees no legal reasons preventing Cabinet from approving the recommendations in the report.

Procurement

8.12. Strategic Procurement award this contract in compliance with section 3.0 (b) of the contract standings

8.13. 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.

8.14. Strategic Procurement supports the Contract award of £274,202 exclusive of VAT as allowed under SCO 9.07.01 following the successful tender on DPS. Contractor A being the successful supplier.

Finance

- 8.15. The Antill road site will deliver a one three-bed family size home for social rent at a total construction value of £274,202.
- 8.16. The award of contract to the appointed contractor went through appropriate tendering process, compliant with the Council's procurement policy.
- 8.17. This scheme is contained in the current HRA financial plan and MTFs, and the estimated spend in the current year will be met from the approved new build capital budget.
- 8.18. Further finance comments are contained in the exempt report.

Equality

- 8.19. 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.
- 8.20. 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 apply to the first part of the duty.
- 8.21. The proposed decision relates to new build works to provide one new Council rented home at Antill Road, N15. The decision will increase the supply of Council rented 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.
- 8.22. 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, CGI Floor Plans - Antill 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).