

Report for: **Cabinet 16 March 2021**

Title: **Approval of construction contract and land appropriation at Lealand Road N15 6JS**

Report  
Authorised by: **David Joyce, Director of Housing, Regeneration and Planning**

Lead Officer: **Robbie Erbmman, Assistant Director for Housing**

Ward(s) affected: **Seven Sisters**

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 three new Council homes for Council rent on Council land consisting of two three-bedroom flats and one two-bedroom flat that is fully accessible for wheelchair-users. The scheme was given detailed planning permission on 17 November 2020. It would improve the street frontage of Lealand Road, which is closely linked to Seven Sisters High Road.
- 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 contractor A (exempt - further details in exempt report), to deliver these new Council homes on vacant land.

## **2. Cabinet Member Introduction**

- 2.1. I'm pleased to recommend building three more Council homes for Council rent, this time on empty land at Lealand Road in South Tottenham: two three-bedroom homes and a two-bedroom home that's fully accessible for wheelchair users.
- 2.2. By the end of this month, the first Haringey Council homes for Council rent in a generation will be complete and ready to let. Building work will have started on 387 Council homes across the borough.
- 2.3. The three low-carbon, energy-efficient homes at Lealand Road demonstrate our commitment to building a new generation of Haringey Council homes that are designed to the highest standards. Sensitive architecture and landscaping mean that they will improve the look of Lealand Road.
- 2.4. By agreeing to build these homes, Cabinet will be giving generations of Haringey families the chance of a secure future.

## **3. Recommendation**

3.1. It is recommended that Cabinet:

3.1.1. Approves the appointment of contractor A to undertake building works to provide a total of three Council rented homes at Lealand Road for a total contract sum of EXEMPT; and approves the client contingency sum set out in the exempt part of the report.

3.1.2. Approves the appropriation of the land at Lealand Road highlighted in the red line boundary 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, and for the purpose of carrying out development as set out in paragraphs 6.1 to 6.21 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 Lealand Road development, under planning permission Ref: HGY/2020/2353.

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 payable as a result of recommendation 3.1.3, within the existing scheme of delegation.

3.2. Approves the appropriation of the land at Lealand Road (edged red in the boundary 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.

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

4.1. On 3 December 2019 Cabinet included the land at Lealand Road into the Council's 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 on this site.

4.2. Following a formal procurement process, a contractor has been identified to undertake these works.

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

5.1. It would be possible not to appoint a contractor to develop this site for the Council. 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), using JCT Design & Build 2016 with 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.

## **6. Background information**

### **Lealand Road development site**

- 6.1. As shown in the red line boundary plan (Appendix 1), the site is located within the Seven Sisters ward and connects onto Tottenham High Road. The site is not within a conservation area, but it is adjacent to the South Tottenham High Road conservation area. Located to the immediate east is a low-rise church building, and to the west is a modern three storey block of flats over a GP surgery. Located to the south is a terrace of Victorian houses and situated to the north of the site are residential gardens linking onto Ferndale Road.
- 6.2. This land is owned by the Council and held in the HRA.
- 6.3. On 3 December 2019, Cabinet approved the inclusion of the Lealand Road site into the Council's housing delivery programme to determine its feasibility and capacity for the delivery of new homes on the basis that, if appropriate, its development would be progressed through to planning consent.
- 6.4. Designs have been developed that will deliver two three-bedroom flats and one two-bedroom flat that is fully accessible for wheelchair-users, all for Council rent and detailed planning permission was granted on 17 November 2020.
- 6.5. The development proposed would not change any existing amenities for Council tenants and does not require the Council to consult under section 105 Housing Act 1985.
- 6.6. The Housing Engagement Team held an engagement event for residents on Thursday 30 January (6.30pm to 8.30pm),
- 6.7. The resident engagement event was held on 30 January 2020 between 6.30pm and 8.30pm at the Redemption Church of God Hall with the project team in attendance to explain the proposals to attendees and take questions on the project. A letter advertising the event and asking for views was sent to residents in the area surrounding the site. The feedback from consultation did not require any major configuration to the design.
- 6.8. The scheme was submitted to planning on the 30 September 2020 and residents were formally consulted as part of this process. Planning approval of the scheme was granted on the 17 November 2020.

### **The Build Contract**

- 6.9. This report is seeking final approval of the construction contract in order to enable the new build works to commence.
- 6.10. The Lealand Road scheme has been designed up to stage 3 of the Royal Institute of British Architects 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 14 months.
- 6.11. The project tender process involved conducting an expression of interest exercise via the DPS in December 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 principal contractor.
- 6.12. The selected contractor was asked to respond to a 60% quality 40% price assessment. They responded with their proposal on 15 January 2021. Full tender sum analysis based on the cost consultants estimate has been provided in Appendix 2, which is exempt due to the commercially sensitive nature of this information.
- 6.13. Costs were evaluated independently by the Project Team's Cost Consultant to ensure value for money in line with current market trends.
- 6.14. 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.
- 6.15. The tender assumes signing of the contract and site possession by 26 March 2021, as the tender offer remains open for 13 weeks from the return date.

### **Appropriation of Land**

- 6.16. This report seeks approval to appropriate the Lealand Road site (outlined in red in the plan 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.
- 6.17. The site is currently held for housing purposes and is vacant and underutilised. It had been previously cleared and secured with temporary metal mesh panel fencing but has since been littered and has overgrown shrubs.
- 6.18. The site currently looks unsightly due to rubbish being thrown over the fence on Lealand Road. The appropriation of the land and the subsequent development will enable the Council to improve the street frontage of Lealand Road, which is closely linked to Seven Sisters High Road.
- 6.19. Following the engagement event on 30 January 2020, a local lettings business located on the Seven Sisters High Road expressed concern that the development would lead to an increase of vehicles on Lealand Road. However, the development will restrict parking to the adapted unit so it is believed that any increase will be minimal and is considered to be reasonable.

- 6.20. This report also seeks Cabinet approval to use the Council's powers under section 203 of the Housing and Planning Act ('HPA') 2016 to override any easements, liberty, privilege, right or advantage of neighbouring properties infringed upon by the Lealand Road development. 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. The use of power of the section 203 for the development site would override potentially enforceable third-party rights that may prevent the construction of the development. The power use section 203 HPA will instead convert those rights into rights for compensation for the loss of that right. Appropriation of the land and the use of section 203 powers to override easements would prevent this.
- 6.22. We have no reason to believe that any such rights will be significantly infringed by this development.
- 6.23. 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 positively contributing to the demand for affordable housing the Borough.
- 6.24. **Procurement Process**
- 6.25. The contract was tendered via the Council's Principal Contractor Service Category of the Dynamic Purchasing System (DPS) on 18<sup>th</sup> December 2020.
- 6.26. Two (2) tender submissions were received by the tender deadline date on 14<sup>th</sup> January 2021.
- 6.27. Tender submissions were checked for compliance and completeness by the Strategic Procurement team on 15<sup>th</sup> January 2021. All were found to be compliant and complete and were taken forward to evaluation.
- 6.28. The tenders were evaluated for Quality and Price as set out in the ITT document.
- 6.29. Following the evaluation process, the total overall Quality and Price scores were combined to provide the ranking of the bidders in accordance with the Most Economically Advantageous Tender (MEAT) and as outlined in the tender documents.
- 6.30. The information below summarise the overall tender scores achieved by each Bidder in line with the tender evaluation criteria of 40% Price and 60% Quality as set out in the Invitation to Tender document.

Supplier	Quality Score (60%)	Price Score (40%)	Total Score (100%)
Bidder A	50.4%	40.0%	90.4%
Bidder B	52.8%	33.4%	86.2%

## 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. Legal

- 8.1. The Council holds the Lealand Road site for housing purposes. In order to override any third-party rights affecting the site, the Council will need to 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 and in order to engage Section 203 HPA. 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 longer required for the purpose for which it is held immediately before the appropriation”*.
- 8.2. 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 with advertising their intention to do so under the section.

The requirements of Section 122 LGA 1972 set out above are satisfied in respect of the Lealand Road site and can therefore be appropriated 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.

The site does not contain open space.

- 8.3. 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.

8.4. The requirements of Section 203 will be satisfied as,

- a) planning permission has been granted for the development;
- b) the land will be appropriated for planning purposes under the Section 122 of the LGA 1972; and
- 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 which '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 situation. 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.

8.5. As set out in this report compensation will be payable to those whose rights are infringed by the development and overridden under section 203.

8.6 The Council will be seeking to appropriate the Lealand Road 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.

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

8.8 The Council has undertaken a procurement via its Dynamic Purchasing System which is an approved method of tendering under CSO 9.04.

8.9 Pursuant to Contract Standing Order 9.07.1(d) The Cabinet has authority to award contracts valued more than £500,000.

8.10 The Head of Legal and Governance (Monitoring Officer) sees no legal reasons preventing the Assistant Director for Commissioning from approving the recommendations in the report.

## **9. Procurement**

9.1. The recommendation to award the contract to Bidder A in accordance with CSO 9.04.1 and 9.04.02 is supported by Strategic Procurement following a compliant procurement conducted under the Principal Contractor Service Category Lot of the Council's Dynamic Purchasing System (DPS).

9.2. The overall proposal submitted by Bidder A is considered to be the most economically advantageous tender and as such, does offer significant value for money to the Council.

## **10. Finance**

10.1. The scheme will deliver 3 units of social rented homes on completion at a total

construction contract value of £833,491.

10.2. The preferred contractor was selected by means of a competitive tender that assessed bidders based on 60% quality 40% price.

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

## **11. Equality**

11.1. 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.

11.2. 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.

11.3. The proposed decision relates to new build works to provide three new Council rented homes at Lealand Road, N15. 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.

11.4. 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.

## **12. Use of appendices**

Appendix 1 – Red line boundaries Lealand Road.

Appendix 2 – NOT FOR PUBLICATION - Exempt financial information relating to the award of a contract for the construction works on Lealand Road.

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

13.1. 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 it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).