

Report for: **Cabinet Member Signing**

Title: **Approval of housing construction contract and land appropriation at Jansons Road car park 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 five new homes on Council-owned land at Jansons Road, Tottenham Green: two one-bedroom flats, one two-bedroom flat, one three-bedroom flat and one three-bedroom wheelchair-accessible flat.
- 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, NFC Homes limited.

2. Cabinet Member Introduction

- 2.1. I am delighted to approve the building of another five new Council homes for letting at Council rent to households on the housing register: two one-bedroom flats, one two-bedroom flat, one three-bedroom flat and one three-bedroom wheelchair-accessible flat.
- 2.2. This decision brings forward a well-designed and contemporary building within an attractive landscaped setting that will improve the streetscape of Philip Lane and Jansons Road. I am confident that additional parking demand created by the loss of the existing car park can be absorbed on-street. And losing those parking spaces has to be balanced against the life-changing impact these homes will provide to five households who otherwise would remain in very unsuitable or temporary accommodation.
- 2.3. These new Council homes will be environmentally sustainable and deliver a low carbon footprint. The development has adopted a fabric first approach with improved U-values and. The new homes will have a green roof, a high level of air tightness, and will use renewable energy sources through air source heat pumps and photo voltaic panels.

3. Recommendation

- 3.1. It is recommended that the Cabinet Member:
- 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 6.9 of this report, and the wider community engagement set out in paragraphs

6.11 to 6.14.

- 3.1.2 Approves pursuant to Contract Standing Order 9.07.1(d) the award of contract to NFC Homes Limited to undertake the new build works to provide a total of five new homes at Jansons Road car park in the contract sum of £1,599,316 and to approve the client contingency sum set out in the Exempt report Appendix 2.
- 3.1.3 Approves the appropriation of the land at Jansons Road car park (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 Jansons Road development under planning ref: HGY/2021/0030.
- 3.1.5 Delegates to the Director of Housing, Regeneration and Planning, after consultation with the Director of Finance and the Cabinet Member for House-Building, Place-Making and Development, 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 Jansons Road car park (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 Jansons Road was approved by Cabinet in July 2019 to be included in the Council's housing delivery programme. The scheme developed and proposed for this land was subsequently granted planning consent and is ready to progress to construction. This report therefore marks the third, and final, Members' decision to develop on these sites.
- 4.2. The direct appointment of NFC Homes Limited is in the Council's overall interest in terms of achieving best value for money and quality.
- 4.3. The appropriation of the sites 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 sites 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 new Council homes at Council rent.
- 4.4. The proposals will improve security for new and existing residents and alleviate potential anti-social behaviour and fly tipping attracted by an 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. The Council could have run a competitive tender from the London Construction Programme (LCP). This option was rejected due to limited interest from the LCP framework contractors and time constraints to deliver the new build programme. Instead, this opportunity was procured via a direct appointment from the Major Works 2019 LCP Framework Agreement, the recommended route for a contract of this value.
- 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

Jansons Road car park development site

- 6.1. As shown in the plan in Appendix 1, Jansons Road car park is situated within Tottenham Green ward and lies between Jansons Road and Philip Lane. The site is currently used to facilitate car parking. Within the boundary of the site is a memorial garden: the Council is not considering building on that garden. The site is not located within a conservation area; however it is on the corner of the Clyde Circus conservation area. To the immediate east on Philip Lane is a terrace of three storey late 20th century houses. To the west on Philip Lane are large buff brick four-storey semi-detached Victorian villas which are locally listed buildings and have been converted into flats. The surrounding properties to the site are a mix of Edwardian terraced houses and Victorian houses. Bruce Grove railway station and Seven Sisters Underground are the nearest stations to the site which has a PTAL 3 rating.
- 6.2. The site is Council owned and held for housing purposes in the HRA.
- 6.3. In July 2019, Cabinet approved the inclusion of Jansons Road car park 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 by the Planning Authority that will deliver five social rented apartments.

Engagement and Consultation

- 6.5. As a result of the pandemic the scheme proposals were presented to the public virtually via Microsoft Teams.
- 6.6. The loss of amenity at Jansons Road car park obliges the Council to consult in line with section 105 of the Housing Act 1985 ('section 105'). The section 105 consultation period commenced on 7th September 2020 and ran until 18th October 2020. Of the eleven homes that received the section 105 pack inviting responses, three households formally responded.
- 6.7. All three respondents stated that the proposed removal of the car parking bays breaches the lease agreement of secure tenants/leaseholders in the area. Secure tenancies and lease agreements were checked, and no evidence has been found that parking rights were conferred on residents in the area.
- 6.8. All three respondents stated that the removal of parking facilities would have a detrimental impact on their daily lives. This included specific impact on older residents and those with disabilities who require parking medical care or family related travel.
- 6.9. The respondents further suggested that there was a lack of available parking in the local area which would result in increased congestion. Comments from respondents stated that the Council had not properly audited the parking conditions in the area and that a full survey should have been conducted before proposals were developed. Two consultees suggested that existing users of the car park should be given free on-street parking should the development proposal progress.
- 6.10. A full parking survey was therefore carried out on two separate weekday nights when residents are home. The survey concluded that the adjoining streets covered by a controlled parking zone have capacity to accommodate any additional parking that may arise from the proposed development. Jansons Road has a PTAL rating 3 which is moderate; and there is capacity for residents to apply for on street parking.
- 6.11. Two wider engagement meetings on the proposals were held on Microsoft Teams on Monday 9 November and Tuesday 10 November 2020.
- 6.12. The key comments raised were again the perceived lack of parking spaces in the roads. However, the Council believes that the results of the transport assessment and parking survey show that the additional parking demand created by the loss of the existing car park plus any new parking demand associated with the proposed development can be absorbed on-street.
- 6.13. The proposed development is a car-free development. A parking bay on site is being proposed for a wheelchair accommodation.
- 6.14. A concern was raised about disturbance during the construction works. The Council will ensure that disturbances during the construction works will be reduced to its possible minimum. An indicative Construction Logistics Plan will be prepared to ensure the impacts of the construction process are minimised for

the local community.

- 6.15. The scheme was submitted for planning on 23rd December 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 9th and 10th November 2020.

The Build Contract

- 6.16. This report is seeking final approval of the construction contract to enable the new build works to commence.
- 6.17. The housing scheme at Jansons Road car park 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 17 months.
- 6.18. Direct appointment in this case is justified because it is in the Council's overall interests. The scheme's viability depends on meeting deadlines attached to grant funding: the risk of an unsuccessful competitive tender process was considered to be high, and therefore to put the scheme's viability at risk. A locally based contractor known to have provided the Council with quality work on similar schemes was therefore approached and asked to submit a tender return.
- 6.19. The selected contractor, NFC Homes Limited was asked to respond to a 100% price assessment. They responded with their proposal on 3rd June 2021. Full tender sum analysis has been provided in Appendix 2, which is exempt due to the commercially sensitive nature of this information.
- 6.20. Cost was evaluated independently by the Project Team's Cost Consultant to ensure value for money in line with current market trends.
- 6.21. Considering the size, scope, complexity, and abnormalities specific to these projects, the Project Cost Consultant has certified that the tender submitted by NFC Homes Limited of £1,599,316 offers value for money in the current market.
- 6.22. The recommendation is therefore to award the contract to NFC Homes Limited as set out in the Exempt report Appendix 2.
- 6.23. 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.
- 6.24. The tender assumes signing of the contract and site possession by 30th September 2021, to allow start on site by Q2 2021. The tender offer remains open for 13 weeks from the return date.

Appropriation of land

- 6.25. This report seeks approval to appropriate the site, Jansons Road car park (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.

- 6.26. Jansons Road site is a car park. The surrounding area is residential in nature accommodating a range of property types and styles. The site is well located with convenient access to public transport and local shopping facilities. The proposed development seeks to optimise the site to accommodate one-, two- and three-bedroom apartments including one fully accessible wheelchair dwellings.
- 6.27. 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 Janson Road car park 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.
- 6.28. It is not believed that any potential infringement of the third-party rights outlined here over the Site would be 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 held on 9th and 10th November 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.
- 6.29. 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.
- 6.30. 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. 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

Section 105 Housing Act 1985 consultation

- 8.1. The Council has carried out a consultation under section 105 of the Housing Act 1985 to enable those of its secure tenants who are likely to be substantially affected by a matter of housing management to:
- (a) to be informed of the authority’s proposals in respect of the matter, and
 - (b) to make their views known to the authority within a specified period;

The Cabinet must therefore prior to making any decision consider the representations made and referred to in Recommendation 3.1.1 of this report.

Appropriation under Section 122 of the Local Government Act 1972

- 8.2. The Council ‘holds’ the Site for housing purposes and is used as a car park and there is no open space. 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. 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.

- 8.3. 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.

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.
- 8.6. The Council satisfies the requirements of Section 203 after appropriation as it

will be carrying out building works and planning permission was granted for the redevelopment of the Site on 9th March 2021.

- 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 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 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 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 as the contract has been awarded by way of a direct award from the LCP Framework (Housing and residential lot 1.1b) in accordance with the framework regulations.

Finance

- 8.14. The scheme will deliver 5 units of social rented homes on completion at a total construction contract value of £1.6m.
- 8.15. The preferred contractor was directly appointed, due to limited interest, following an assessment by the project team’s cost consultant.
- 8.16. 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.
- 8.17. Further Finance comments are contained in the exempt report.

Equality

- 8.18. 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.

8.19. 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.

8.20. The proposed decision relates to new build works to provide five Council rented home at Jansons Road car park. 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](#). It is noted that one new unit will be wheelchair accessible with on-site disabled parking as set out in paragraph 6.13. As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

8.21. It is noted that during the S105 consultation, three residents raised concerns about the impact of removing the car park including due the specific impact on older residents and those with disabilities. It is also noted that in response to these concerns, the council has undertaken a full parking survey which concluded that the adjoining streets covered by a controlled parking zone have capacity to accommodate any additional parking that may arise from the proposed development. It is also noted that one of the new council homes will be wheelchair-accessible and will be accompanied by a disabled parking bay. In summary, the decision is a proportionate means of achieving a legitimate aim insofar as individuals with protected characteristics are overrepresented on the waiting list for a council home and stand to benefit from the construction of new homes, while appropriate steps are being taken to mitigate any potential negative impact on individuals with protected characteristics that may be caused by the reduction in car park accessibility.

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 -
Appendix 2- Exempt – financial information

10. Local Government (Access to Information) Act 1985

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 person (including the authority holding that information).