

Report for: **Cabinet Member Signing**

Title: **Approval of appropriation of land and construction contract at three sites in Noel Park**

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

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

Ward(s) affected: **Noel Park.**

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 residents, to deliver three new Council homes for Council rent on Council land in Noel Park at Bury Road, Farrant Avenue and Morley Avenue. The recommended development has received planning permission: for Bury Road on 12<sup>th</sup> April 2021, Farrant Avenue on 12<sup>th</sup> March 2021 and Morley Avenue on 9<sup>th</sup> April 2021.
- 1.2 In order to achieve deliver these new homes, Cabinet is being asked to agree that the Council should appropriate the land, first for planning purposes in order to override any third-party rights and then on completion for housing purposes; and to award a construction contract to a locally based firm, NFC Homes limited.

### **2. Cabinet Member Introduction**

- 2.1 I'm delighted to approve the building of another three new three-bedroom Council houses for letting at Council rent to households on the housing register. These beautiful new Council houses retain the principle and proportions of the key features in the Noel Park area. Without being pastiche, they sit sensitively within their existing context. They will have high levels of insulation, solar roof panels, energy efficient heating, and will be constructed with responsibly sourced materials

### **3. Recommendation**

- 3.1. It is recommended that Cabinet:
  - 3.1.1 Approves the direct appointment of NFC Homes Limited as allowed by Contract Standing Order 10.01.2. to undertake the new build works to provide a total of three Council rented homes at Bury Road, Farrant Avenue and Morley Avenue garages for a total contract and client contingency sum set out in the exempt part of the report.
  - 3.1.2 Approves the appropriation of each of the land at Bury Road, the Farrant Avenue garages and the Morley Avenue garages (each 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 each of the Bury Road, Farrant Avenue, and Morley Avenue developments, under planning permissions HGY/2021/0059 (Bury Road) HGY/2021/0095 (Farrant Avenue) and HGY/2021/0054 (Morley Avenue).
- 3.1.4 Delegates to the Director of Housing, Regeneration and Planning, after consultation with the Director of Finance and the Cabinet Member for House Building, Placemaking and Development, authority to make payments of compensation as a result of any infringement arising from each of the development and the recommendation within the existing scheme of delegation.
- 3.1.5 Approves the appropriation of each of the land at Bury Road, Farrant Avenue and Morley Avenue (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 each of the development.

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

- 4.1. The land at Bury Road, Farrant Avenue and Morley Avenue was approved by Cabinet in July 2019 to be included in the Council's housing delivery programme. The schemes were subsequently granted planning consent and are 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. As well as delivering three homes for families in housing need, the proposals will improve security for new and existing residents and alleviate fly tipping, anti-social behaviour, and pest infestation attracted to the sites by the derelict garages at Bury Road, Farrant Avenue and Morley Avenue garages.

#### **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 three sites could have been procured through separate contracts. This option was rejected because it would have been more costly and more time-consuming.
- 5.4. The Council could continue with the scheme without appropriating the sites 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 residents about the development of this sites 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.
- 5.5. 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**

### **Bury Road, Farrant, and Morley Avenue garages**

- 6.1. As shown in the plans in Appendix 1, Bury Road, Farrant Avenue, and Morley Avenue garages are situated within the Noel Park conservation ward area. The garage sites are located on residential streets characterised by low-density terraced houses. The initial proposal of single dwelling houses responds to surrounding constraints and the existing streetscape. The sites are located within easy access to a range of local amenities including Wood Green shopping centre and Wood Green underground station. The sites offer a PTAL of 3 and has good pedestrian and cycle links.
- 6.2. This land is Council-owned and held in the HRA.
- 6.3. In July 2019, Cabinet approved the inclusion of Bury Road, Farrant Avenue, and Morley Avenue garages sites 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. The housing scheme at Bury Road, Farrant Avenue, and Morley Avenue garages 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 technical design and new build works; it is currently anticipated that the contract period will be 15 months.

### **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. Two engagement meetings were held for Farrant and Morley Avenue on Tuesday, 17 November, and Thursday 19 November and Bury Road engagement meeting was held on 17<sup>th</sup> November 2020. The proposals were positively received by Members and some residents.
- 6.7. One resident raised a concern that material should be responsibly sourced and environmentally friendly and make use of material such as timber frames which is in keeping with the Noel Park Conservation area. Other concerns raised were that designs of the new houses should reflect the characteristics of the existing houses in the Noel Park conservation area. The Council's approach to design was to retain the principle and proportions of the key features in the Noel Park area and develop a scheme that sensitively sits within the existing context yet is not pastiche. It is important to allow the original buildings within Noel Park to be clearly identifiable so that they can be clearly linked back to their era of construction, without the confusion of an imitation infill.
- 6.8. One tenant raised a concern about possible injury of rights of light to his property and back garden as a result of the proposed new building line. A right of light survey was undertaken. 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. However, should any claim be made for any infringement of right to light, potential costs are set out in the exempt report Appendix 2.
- 6.9. Nobody attended the Bury Road engagement meeting in person. However, two comments were placed on the Council's on-line comments board. One supported the development but did not feel that the design reflected the Noel park area; the other supported the development on the basis that the area is in need of regeneration due to local derelict buildings and the multi storey car park
- 6.10. It is noted that engagements regarding S105 obligations were not applicable for these sites.
- 6.11. The schemes were submitted for planning on 22<sup>nd</sup> 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 17 and 19<sup>th</sup> November 2020.

### **The Build Contract**

- 6.12. This report is seeking final approval of the construction contract to enable the new build works to commence.

- 6.13. The project tender process involved conducting an initial expression of interest exercise via the LCP Major Works 2019 framework, in May 2021. Due to limited interest in a competitive tender, however, it was decided in light of time constraints that a direct appointment was the most appropriate route.
- 6.14. 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 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.
- 6.15. 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.
- 6.16. Cost was evaluated independently by the Project Team's Cost Consultant to ensure value for money in line with current market.
- 6.17. 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 £1,027,729 offers value for money in the current market.
- 6.18. The recommendation is therefore to award the contract to NFC Homes Limited as set out in the exempt report Appendix 2.
- 6.19. 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.
- 6.20. The tender assumes signing of the contract and site possession by 30<sup>th</sup> September 2021, to allow start on site by Q2 2021 as the tender offer remains open for 13 weeks from the return date.

### **Appropriation of land**

- 6.21. This report seeks approval to appropriate the sites at Bury Road, Farrant, and Morley Avenue (outlined in the plans attached at Appendix 1), for planning purposes pursuant to Section 122 of the Local Government Act 1972 as they are each no longer required for the purposes for which they currently held.
- 6.22. The Sites consists of derelict garages. The land at Morley Avenue is a poorly maintained parcel of land that houses 3 garages. Bury Road garages is being used to store burrows by food retailers. Removal of overgrown vegetation to the rear of Farrant Avenue garages may have an impact on the green cover however the scheme presents significant enhancement opportunities by utilising the site to provide much needed homes. The unkept grounds will be free from pests and foxes. Natural surveillance to the front of the site will mitigate fly tipping and dumping of rubbish. The appropriation of the land and the subsequent

development will enable the Council to implement security measures such as path lighting to help reduce crime levels but also bring the garages back into use as housing.

- 6.23. 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 Bury Road, Farrant, and Morley Avenue developments. 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.
- 6.24. It is not believed that the potential infringement of the third-party rights outlined here over the Sites 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 the Council from the risk of possible future claims resulting from infringements of a right 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 under section 204 of the HPA 2016.
- 6.25. 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. However, should any claim be made for any infringement of right to light, potential costs are set out in the exempt report Appendix 2.
- 6.26. 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

#### Appropriation under Section 122 of the Local Government Act 1972

- 8.1. The Council ‘holds’ each of the Sites for housing purposes. In order to override any third-party rights affecting each of the Sites, the Council will need to rely on section 203 of HPA 2016 but must first appropriate 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 they first advertise their intention to do so under the section. The sites do not contain any open spaces.
- 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. 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 satisfies the requirements of Section 203 after appropriation as building works will be carried out pursuant to planning permissions granted for Bury Road on 12<sup>th</sup> April 2021, Farrant Avenue 1 on 2 March 2021 and Morley

Avenue on 9<sup>th</sup> April 2021 and 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 each of the Sites following practical completion of each of the developments 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. The appropriations of each site 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. Bury Road, Farrant, and Morley Avenue sites will deliver one 3-bedroom house across all three sites. Total construction value is referenced on the exempt report Appendix 2.
- 8.15. The preferred contractor was directly appointed, due to limited interest, and in line with contract standing order 10.01.2.
- 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 three Council rented homes.
- 8.21. The decision will increase the supply of Council rented homes which are genuinely affordable to 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. From an equalities perspective, it is noted that engagements regarding S105 obligations were not applicable for these sites and that consultation on this development has taken place with residents.
- 8.23. 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).