

Report for: **Cabinet Member Signing**

Title: **Approval of appropriation of land and construction contract at Stainby Road car park and Cornwall Road**

Report

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

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

Ward(s) affected: **St Anns & 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 engagement and consultation with local residents, to build two houses on Stainby Road car park and nine apartments on a disused tennis court at Cornwall Road for Council rent on Council land.
- 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'm delighted to approve the building of another eleven new Council homes for letting at Council rent. This decision will bring forward two three-bedroom houses at Stainby Road and three one-bedroom flats, four two-bedroom flats and two two-bedroom flats for wheelchair users at Cornwall Road.
- 2.2 The new homes will allow the Council to enhance their surrounding areas. At Cornwall Road, vacant and part-derelict land will be comprehensively landscaped to benefit new and existing residents, with a communal space with natural play space for younger children, seating, and new planting. The new homes at Stainby Road will fill a noticeable gap in a well-established street. Stainby Road and, with the exception of the two wheelchair-accessible homes, Cornwall Road are both car-free developments.

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 6.13 of this report, and the wider community engagement set out in paragraphs 6.6 to 6.18.
 - 3.1.2 Approves the appointment of NFC Homes Limited to undertake the new build works to provide a total of nine new homes at Cornwall Road and two new homes at Stainby Road car park for the contract sum of £3,228,291 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 Cornwall Road Tennis Court and the land at Stainby Road Car Park (each shown 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 each of the Cornwall Road development under planning ref: HGY/2021/0967 and Stainby Road development, under planning permission ref: HGY/2020/0087.
- 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, Placemaking 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 each of the land at Cornwall Road and the land at Stainby Road car park (each 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 individual development.

4. Reasons for decisions

- 4.1. The land at Cornwall Road and Stainby Road 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 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.
- 4.3. The proposals will improve security for new and existing residents and alleviate potential anti-social behaviour attracted to the sites by an open disused Tennis Court at Cornwall Road and an unsecured car park at Stainby Road.

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 two 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 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.
- 5.5. 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

Cornwall Road and Stainby Road car park development site

- 6.1. As shown in the plan in Appendix 1, Cornwall Road site is situated within the St Anns ward area and has a PTAL rating 2. The existing site is a disused tennis court, it lies between Cornwall and Ida Road. There are shared boundaries with a row of residential properties that front Gorleston Road. The site itself is made up of an eastern area of grassland bordering the Ida Road properties and a hard-surfaced area with partially demolished garages.
- 6.2. As shown in the plan in Appendix 1, Stainby Road car park is situated within the Tottenham Green ward area. The site lies between Seven Sisters and Tottenham Hale stations and has a PTAL rating 6a. Across the road from the site is a single-storey building known as Welbourne Primary School. To the east side of the site are two bungalows and two garages which are accessed directly from the site. The flank wall of the adjacent two-storey terraced house and the garden fence from the west boundary of the site has a high brick wall with private gardens behind them along the southern boundary.
- 6.3. Both sites are Council owned and held for housing purposes in the HRA.
- 6.4. In July 2019, Cabinet approved the inclusion of Cornwall Road and Stainby 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.

- 6.5. Designs have been developed and approved that will deliver nine flats at Cornwall Road, three one-bedroom flats, four two-bedroom flats and two two-bedroom flats for wheelchair users. Stainby Road will deliver two three-bedroom houses with front and rear gardens.

Community Engagement – Cornwall Road

- 6.6. As a result of the pandemic the scheme proposals were presented to the public virtually via Microsoft Teams.
- 6.7. Two engagement meetings were held for Cornwall Road on Monday 16th November and Friday 20th November 2020. The proposals were positively received by Members and some residents.
- 6.8. Some residents raised concerns about the height of the proposed building and possible overlooking to gardens and privacy. To tackle this issue, the Council designed projecting windows which obscure the direct view out towards the East but allow views out towards the North and the South. This solution stops the overlooking issues whilst still allowing daylight into the accommodation. Whilst there were concerns raised about overlooking from balconies of the proposed building onto 7-8 Ida Road, all balconies have been designed to stop overlooking. The balconies on both side use louvred screens to direct views away from the neighbouring gardens, and the balconies on the North facade face North away from neighbouring properties.
- 6.9. A neighbouring resident raised a concern about the current location of the proposed bin store serving block 2. The bin store appeared to be positioned in a neighbouring resident's back garden. the Council has carried out the necessary land registry searches and report on titles. No encroachment by the council has been identified. The proposed location of the bin store is confined within the boundary of council owned land. The scheme has been designed in accordance with land owned and managed by the Council.
- 6.10. Removal of trees which are significant to wildlife was another area of concern raised by participants. An arboricultural survey was carried out by Thompson Environmental consultants. The general recommendation is that all trees on site should be considered for retention where possible, with the greatest consideration given to Category A trees and then B trees where these specimens occur, and finally Category C trees. T3 and T4 trees are located within an existing brick planter. These category B trees are too large to be in proximity of the existing and proposed buildings and therefore need to be removed. The proposals incorporate replacement trees of a more appropriate size and species as part of a comprehensive landscaping scheme.
- 6.11. Several issues were raised in relation to security and anti-social behaviour (ASB) and the risk of individuals using flats roofs to access adjacent gardens. The Council believes that the development proposals will bring new defined communal and private spaces, creating gardens over what was an underused open space. This will contribute to aural surveillance and control of access, therefore reducing the likelihood of ASB.

- 6.12. Some questions were raised about the potential impact of the new development on the availability of car parking. With the exception of the two wheelchair-accessible homes, Cornwall Road is a car-free development. Two parking bays for the two wheelchair units will be provided, and cycle storage for sixteen bikes is provided for the remaining seven homes. The site is located very close to a number of public transport options and within walking distance to local amenities. The provision of two parking spaces is considered appropriate and it is not considered that the development will cause a strain on the availability of parking locally.

Formal Consultation and Community Engagement – Stainby Road

- 6.13. The loss of amenity at Stainby 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 20 homes that received the section 105 pack inviting responses, just one household formally responded, stating that they have a garage attached to their house and access should be permitted. The proposed building has been positioned more than 6m from the garage in order to grant the necessary car manoeuvring space and ensure access.
- 6.14. Two community engagement meetings were held on Microsoft Teams for Stainby Road car park on Thursday 12th November and Friday 13th November 2020. The proposals were positively received by Members and some residents.
- 6.15. One resident supported the need for more council houses which is in keeping with those houses in the local area.
- 6.16. One resident commented on the number of new homes being developed in the area and the impacts this could potentially have on transport services and shops, and that open space will be further compromised by the removal of the car park at Stainby Road with only limited parking facilities in the area. Additionally, a resident raised concerns about there being no provisions for extra schools or nurseries.
- 6.17. A car-free development is proposed. The new houses will not have dedicated car parking spaces. Whilst the loss of parking at Stainby Road car park 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 PTAL 6a and shops are within walking distance. Haringey Local Plan 2017 is working towards low carbon in Haringey with great emphasis of ensuring that new developments reduce energy consumption and is sustainable. The provision for nurseries and local schools are considered through the planning process.
- 6.18. 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 12th and 13th November 2020.

The Build Contract

- 6.19. This report is seeking final approval of the construction contract to enable the new build works to commence.
- 6.20. The housing schemes at Cornwall Road and Stainby Road car park have 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.
- 6.21. Due to design issues related to refuse and emergency access arrangements onto the site which had to be resolved before planning submission, the Council was unable to submit the Cornwall Road development for planning until 31st March 2021. Procuring both sites together on a single contract enabled a guaranteed tender return, offering the Council best value and ensuring that both sites can be delivered to schedule. Both sites are forecast with the GLA to start on site by September 2021. Identifying an efficient procurement process was crucial to avoid risk of loss of reputation and grant funding. The scheme's viability depends on securing this grant income.
- 6.22. Procuring both sites on a single contract also reduces the Council's costs for Employer's Agent (EA) services. The Council has appointed the same EA and multi- disciplinary consultants for both projects, and their fees are reduced on the basis that they run both schemes concurrently via the same project meetings, working with a single contractor for the two schemes.
- 6.23. Planning permission had been received for Stainby Road on 22 February 2021. Planning permission had not been granted for Cornwall Road when the tender commenced, but it was received during the tender period, on 26th May 2021, and the contractor was able to price for the works and consider any planning obligations within the price submitted.
- 6.24. 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.
- 6.25. The selected contractor, NFC Homes Limited, which is based locally, was asked to respond to a 100% price assessment. They responded with their proposal on 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.
- 6.26. Cost was evaluated independently by the Project Team's Cost Consultant to ensure value for money in line with current market trends.
- 6.27. 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 £3,228,291 offers value for money in the current market.

- 6.28. The recommendation is therefore to award the contract to NFC Homes Limited.
- 6.29. 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.
- 6.30. 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

- 6.31. This report seeks approval to appropriate the two sites, Cornwall Road and Stainby Road car park (each outlined red 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.
- 6.32. Cornwall Road site is a vacant and part derelict land, formerly a tennis court adjacent and to the rear of an existing council block of flats. 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 and open space. The proposed development seeks to optimise the site to accommodate one and two-bedroom apartments including two fully accessible wheelchair dwellings. The site will be comprehensively landscaped to provide a green and attractive setting for the development and to enhance the appearance of the surrounding area.
- 6.33. Stainby Road car park is a noticeable gap in a well-established street. The assessment of the site recommended two houses 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.
- 6.34. 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 Cornwall Road and Stainby 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.
- 6.35. The Council does not have reason to believe that there will be any infringement of the third-party rights outlined here. In the event that there was any infringement of those third-party rights, this would not constitute a breach to private and family life.

Any 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 16th and 20th November for Cornwall Road and 12th and 13th November 2020 for Stainby, 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.

- 6.36. 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.
- 6.37. 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' the two sites for housing purposes. In order to override any third-party rights affecting these two sites, the Council will need to rely on section 203 of HPA 2016 but must first appropriate each of 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 Sites are Council owned land;
 - b) the Sites are no longer required for housing purposes; and
 - c) the Council is seeking to appropriate each of sites for the statutory purpose of planning.

- 8.4. The sites do not contain open space.

Section 203 of the Housing and Planning Act 2016

- 8.5. By appropriating the sites 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.
- 8.7. The Council satisfies the requirements of Section 203 as building works will be carried on each of these sites and planning permission has been granted for the Stainby Road site on 22nd February 2021 and for the Cornwall Road development on 26th May 2021.
- 8.8. The Council will be seeking to appropriate each of the Sites following practical completion of each 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 each site must be held in the HRA.
- 8.9. The contract which this report relates to has been procured by direct call-off under the LCP Major Works Framework 2019 ("the Framework").
- 8.10. The Framework was procured in accordance with the Public Contracts Regulations 2015 (as amended).
- 8.11. The Service and Strategic Procurement have confirmed the direct award of the contract as set out in the report is permissible under the rules of the Framework.
- 8.12. The Head of Legal and Governance (Monitoring Officer) sees no legal reasons preventing Cabinet from approving the recommendations in the report.

Procurement

- 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 notes the proposed contract is sourced via the LCP framework lot 1.1b (housing and residential). The rules of the framework permit a direct award up to £2,500,000, and in exceptional circumstances above that value. Exceptional circumstances are defined as: there is a requirement for specialist skills/experience to deliver the works held by a single supplier to the Framework; there is insufficient time available to run a mini-competition and construct the works due to no fault of the Commissioning Organisation and where the circumstances are unforeseen; circumstances as set out in Regulation 32 and 72 of the Public Contract Regulations 2015 (as amended). In this situation there was not sufficient time available to run a mini-competition, as per the circumstances notes in 6.20 of this report.

Finance

- 8.15 The Cornwall Road site will deliver 3 one-bedroom and 6 two-bedroom flats for social rent. Stainby Road will deliver 2 houses. Total construction value is referenced on the Exempt report Appendix 2.
- 8.16 The preferred contractor was directly appointed, due to limited interest, following an assessment by the project team's cost consultant.
- 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 Appendix 2.

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 nine Council rented home at Cornwall Road and two new homes at Stainby Road. 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 Following the S105 consultation related to the loss of the Stainby Road Car Park amenity, a full Equalities Impact Assessment was undertaken. This set out the potential impacts related to the loss of the car park for those with protected characteristics, and the actions the council has taken to mitigate these impacts. This has included carrying out a survey of nearby car park parking provision which indicated that the local provision was adequate to mitigate the negative impact. In addition, it was noted that building new council homes at council rents will have an overall positive impacts for those with protected characteristics in the borough by increasing the supply of affordable housing.
- 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 particular person (including the authority holding that information).