

Report for: **Cabinet Member Signing**

Title: **Approval of housing construction contract and land appropriation at Land adjacent to 318a White Hart Lane N17**

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

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

Ward(s) affected: **White Hart Lane**

Report for Key/
Non Key Decision: **Key Decision**

1. Describe the issue under consideration

- 1.1 This report seeks Cabinet's approval to build six new Council homes on the vacant corner of land adjacent to 318a White Hart Lane.
- 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 in order to override any third party rights; and in light of a formal tender process to award a construction contract to Contractor A.

2. Cabinet Member Introduction

- 2.1 I'm delighted to approve the building of another six new Council homes for letting at Council rent to households on the housing register: three homes with three bedrooms, two with two bedrooms and one with one bedroom.
- 2.2 The development was welcomed by local residents whose views about materials were incorporated into the design. It will combine a contemporary design with traditional materials which address its context.

3. Recommendation

- 3.1. It is recommended that Cabinet:
- 3.2.
- 3.1.1 Approves the appointment of Contractor A to undertake the new build works to provide a total of six new Council rented homes at the land adjacent to 318a White Hart Lane for a total contract sum of set out in the exempt part of the report; and approves the client contingency sum set out in the exempt part of the report.
- 3.1.2 Approves the appropriation of the land known as land adjacent to 318a White Hart Lane (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.
- 3.1.3 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 318a White Hart Lane development, under planning permission Ref: HGY/2020/1322.
- 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, 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.

- 3.1.5 Approves the appropriation of the land adjacent to 318a White Hart Lane (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 adjacent to 318a White Hart Lane was approved by Cabinet in July 2019 to be included in the Council's housing delivery programme. The scheme has subsequently been granted planning consent and is ready to progress to construction. This report therefore marks the third, and final, Members' decision to develop on this site.
- 4.2. Contractor A has been identified by a formal tender process to undertake these works.
- 4.3. The appropriation of the site for planning purposes is required as it will allow the Council to use the powers contained in Section 203 to override easements and other rights of neighbouring properties and will prevent injunctions that could delay or prevent the Council's proposed development. Section 203 converts the right to seek an injunction into a right to compensation. The site will need to be appropriated back from planning purposes to housing purposes on completion of the development to enable the Council to use the land for housing and let one new Council home at Council rent.
- 4.4. The site proposal will provide six much needed Council homes on Council land, enhancing the under-used corner of land with an attractive, active frontage to both White Hart Lane and Weir Hall 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. This opportunity was procured via a competitive tender through the London Construction Programme (LCP) Major Works 2019 Framework Agreement, the route recommended by Strategic Procurement for a contract of this value. Alternative options would have been: a direct appointment to one of the LCP framework providers, but this option was rejected in favour of the assumed quality and price safeguarding a competitive tender provides; or a competitive tender through an alternative framework, but this option was rejected in favour of the existing confidence in the LCP.
- 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

Land adjacent to 318a White Hart Lane development site

- 6.1. As shown in the plan in Appendix 1, the site consists of the land adjacent to 318a White Hart Lane, a prominent corner at the junction of White Hart Lane and Weir Hall Road, opposite Tottenham Cemetery. The immediate area is predominantly characterised by two-storey, terraced houses
- 6.2. This land is Council-owned land held in the HRA.
- 6.3. In July 2019, Cabinet approved the inclusion of the land adjacent to 318a White Hart Lane into the Council's housing delivery programme to determine its feasibility and capacity for the delivery of new homes and then, if appropriate, their progression through to planning consent.
- 6.4. Designs have been developed and approved that will deliver six homes for Council rent at the land adjacent to 318a White Hart Lane; two three-bedroom, five person duplexes, one three-bedroom, five person apartment, two two-bedroom, four person apartments and one one-bedroom, two person apartment.

Engagement and Consultation

- 6.5. An initial resident engagement event was held on 11th February 2020 at Selby Centre N17. The proposals received a majority positive response from Members and residents in attendance. Residents highlighted the issue of limited public parking on match days and concerns regarding the density of the proposed scheme and reported issues of bulk waste dumping on the existing site.
- 6.6. The scheme was submitted to planning on 05th June 2020 and residents were again formally consulted as part of this process. During the consultation period, in response to the positive traffic report considerations, it was decided that the eventual residents would be eligible to apply for parking permits. Planning approval of the scheme was granted after considering responses to the statutory planning consultation on 21st September 2020.

The Build Contract

- 6.7. This report is seeking final approval of the construction contract to enable the new build works to commence.
- 6.8. The housing scheme at land adjacent to 318a White Hart Lane 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 develop and finalise the technical design and complete the new build works. It is currently anticipated that the contract period will be 10 months.

- 6.9. The project tender process involved conducting an expression of interest exercise via the LCP MW 2019 framework in January 2021. This culminated in interest from two contractors, Contractors A and B. Whilst a minimum of three contractors is preferable, this limited interest was compliant with Contract Standing Orders and a competitive tender was deemed the appropriate route for the appointment of a principle contractor.
- 6.10. Bidders were asked by strategic procurement to respond to a 60% price, 40% quality assessment. Details of works cost received from all bidders has been provided in Appendix 2, which is exempt from publication due to the commercially sensitive nature of this information.
- 6.11. The quality questions were evaluated by Haringey's project team. The project team's Cost Consultant was assigned to independently evaluate the cost to ensure value for money in line with current market trends.
- 6.12. Contractor A's contract sum is in the exempt part of the report.
- 6.13. The recommendation is therefore to award the contract to Contractor A, as set out in the exempt report Appendix 2.
- 6.14. 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.
- 6.15. The tender assumes signing of the contract and site possession by early August 2021, to allow start on site by in September 2021.

Appropriation of land

- 6.16. This report seeks approval to appropriate the site, land adjacent to 318a White Hart Lane (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.
- 6.17. The site is located on a corner site that fronts onto White Hart Lane to its southern boundary and Weir Hall Road to its western boundary. Tottenham Cemetery is directly adjacent to the south, on White Hart Lane. The proposed development will provide six Council homes and an active frontage to both White Hart Lane and Weir Hall Road. The appropriation of the land and the subsequent development will enable the Council to develop much needed housing in the London Borough of Haringey.
- 6.18. 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 land adjacent to 318a White Hart Lane 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 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.

- 6.19. It is not believed that the potential infringement of any third-party rights is a breach of human rights, being rights to private and family life. 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.
- 6.20. 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.
- 6.21. Regarding the value of potential compensation for the loss of third-party rights of access and or enjoyment, having undertaken the necessary checks against neighbouring properties, none have easements in relation to the site. Furthermore, no neighbouring properties have come forward asserting any rights of access or enjoyment. Based on these circumstances, it is unlikely that there will be any claims, but the level of compensation is unquantifiable until such a claim is made although it is not likely to be so significant as to impact on the scheme's viability.

7. Contribution to Strategic Outcomes

- 7.1. The recommendations in this report will support the delivery of the Housing Priority in the new Borough Plan, which sets out in its first outcome that *"We will work together to deliver the new homes Haringey needs, especially new affordable homes"*. Within this outcome, the Borough Plan sets the aim to *"Ensure that new developments provide affordable homes with the right mix of tenures to meet the wide range of needs across the borough, prioritising new social rented homes"*.
- 7.2. In particular, the recommendations in this report are explicitly about delivering the aim *"to deliver 1,000 new council homes at council rents by 2022"*. The proposals in this report contribute directly to the strategic outcomes on new housing supply that are at the core of the aims of the Council as expressed in the Borough Plan.

8. Statutory Officers comments

8.1. Legal

Appropriation under Section 122 of the Local Government Act 1972

The Council 'holds' the site for housing purposes. In order to override any third-party rights affecting the site, the Council will need to rely on section 203 of HPA 2016 but must first 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.

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

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.

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.

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 21st September 2020.

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.

The contract referred to in the report has been procured through the London Construction Programme Major Works Framework ("Framework").

The Framework has been established in accordance with the Public Contracts Regulations 2015 and therefore provides a compliant route to market.

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

8.2. **Procurement**

Strategic Procurement (SP) note that this report relates to the approval of Housing Construction Contract and Land appropriation at Land adjacent to 318a White Hart Lane N17.

SP support the recommendations in this report in accordance with Contract Standing Order clause 7.0.1. (b)

Pursuant to CSO 7.01(b) and Regulation 33 of the Public Contracts Regulations 2015, SP confirms that tenderers were invited to Tender through the LCP Major Works 2019 Framework under Lot 1.1B North.

Compliant tenders were received from two contractors with further clarifications needed to achieve the final price.

SP note that tender returns were evaluated independently by a Quality Panel and the Price element of the Tender was evaluated separately. Contractor A scored the highest in quality and Price overall as set out in the Exempt part of this report.

SP support the recommendations within this report and have no objections with awarding this Contract to Contractor A for the value outlined within the Exempt.

8.3. **Finance**

The scheme will deliver 6 units of social rented homes on completion at a total construction contract value as set out in the exempt report.

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

There is adequate provision within the HRA new build/acquisition budget for the reported cost.

Further finance comments are contained in the exempt report.

8.4. **Equality**

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.

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.

The proposed decision relates to new build works to provide six new Council rented homes at 318 White Hart Lane, N17. The decision will increase the supply of Council rented homes. This will have a positive impact on individuals on the housing register, which includes people in severe housing need and people currently living in temporary accommodation. Data held by the council suggests that women, young people, and BAME communities are over-represented among those living in temporary accommodation. As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

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 – land adjacent to 318a White Hart Lane.

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).