

Report for: **Cabinet October 2021**

Title: **Approval of housing construction contract and land appropriation at Redlands, Summerhill Road 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 eight new Council homes for Council rent on Council land that is currently used primarily as a car park for the Redlands Estate residents and includes six garages.
- 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 pleased to recommend that Cabinet approves the construction of another eight new Council homes for letting at Council rent: two three-bedroom houses and a small block of six flats, four with two bedrooms and two with one bedroom. One flat will be fully accessible to wheelchair users.
- 2.2. These new homes will transform the lives of their new tenants. They will also enhance West Green Road and Summerhill Road, creating an active frontage, soft landscaping along both streets, and more a coherent building line. Existing residents on the estate will benefit from a new communal garden, cycle storage, and priority for the new homes through the Neighbourhood Moves Scheme

3. Recommendation

It is recommended that Cabinet:

- 3.1 Approves the appointment of Contractor A, identified in the exempt part of the report, to undertake the new build works to provide a total of eight new Council rented homes at Redlands, Summerhill Road for a total contract sum set out in the exempt part of the report; and approves the client contingency sum set out in the exempt part of the report.

- 3.2 Approves the appropriation of the land known as Redlands, Summerhill Road (edged red in the site plan attached at Appendix 1) from housing purposes to planning purposes 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.
- 3.3 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 Redlands, Summerhill Road development, under planning permission Ref: HGY/2020/1779.
- 3.4 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 the development and the recommendation 3.1.3, within the existing scheme of delegation.
- 3.5 Approves the appropriation of Redlands, Summerhill Road (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 site known as Redlands, Summerhill Road 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. There are no reasons for the Council to believe that any third-party rights would be infringed by the development: the scheme has received planning permission, and no concerns about the loss of rights were raised during extensive engagement and consultation. However, appropriation of the site for planning purposes is recommended as a precaution. 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 eight new Council homes at Council rent.
- 4.4. The site proposal will provide eight much needed Council homes on Council land, alleviate potential anti-social behaviour attracted to the site by an open,

unsecured car park and improve both the estate boundary and street scene of West Green Road and Summerhill 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 Crown Commercial Service (CCS) Construction Works and Associated Services Framework Agreement, the route recommended by Strategic Procurement for a contract of this value. Alternative options would have been either a competitive tender through the London Construction Programme (LCP) Major Works 2019 Framework Agreement or a direct appointment to one of the LCP framework providers. These options were both rejected: the first because a competitive tender through the LCP had already been unsuccessful, and the second because of the quality and price safeguarding a competitive tender is believed to provide.
- 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

Redlands, Summerhill Road development site

- 6.1. As shown in the plan in Appendix 1, the site consists of the land adjacent and behind 1-20 Redlands, Summerhill Road, fronting onto Summerhill Road to its eastern boundary and West Green Road to its southern boundary. The site sits adjacent to the border of the Clyde Circus Conservation Area, running along its northern boundary, which is lined with a variety of residential properties of differing age, condition and styles; a mixture of Victorian cottages and villas, Edwardian terraced houses and larger scaled blocks of flats from the late 20th century.

- 6.2. This land is Council-owned and held in the HRA.
- 6.3. In July 2019, Cabinet approved the inclusion of Redlands, Summerhill Road into the Council's housing delivery programme to determine its feasibility and capacity for the delivery of new homes and then, if appropriate, its progression through to planning consent.
- 6.4. Designs have been developed and approved that will deliver eight homes for Council rent at Redlands, Summerhill Road; two three-bedroom, five person houses, four two-bedroom, four persons apartments and two one-bedroom, two persons apartments (one being a fully accessible wheelchair apartment).

Engagement and Consultation

- 6.5. An initial resident engagement event was held on 13th February 2020 at Dorset Hall Nursery N15. The proposals were positively received by Members and residents in attendance. Residents highlighted the issue of limited public parking in the area which contributed to non-Redlands drivers using their estate car park and reported anti-social activity on-site caused by the open, unsecured nature of the car park.
- 6.6. Obligations to consult in line with section 105 of the Housing Act 1985 were applicable for this site. The section 105 consultation period commenced on 31st January 2020 and ran until 8th March 2020. Of the 20 homes that received the section 105 pack inviting responses, two households formally responded. Both households stated that they use the bays daily.
- 6.7. Whilst the loss of parking at Redlands, Summerhill Road 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 a rating of PTAL 4 and shops are within walking distance.
- 6.8. The scheme was submitted to planning on 27th July 2020 and residents were again formally consulted as part of this process. During the consultation period, the ground floor plan was redesigned to amend the parking provision from two wheelchair bays to include an additional four general use parking bays for the estate. Planning approval of the scheme was granted after considering responses to that consultation on 21st October 2020.

The Build Contract

- 6.9. This report is seeking final approval for the award of the construction contract to enable the new build works to commence.
- 6.10. The housing scheme at Redlands Summerhill 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 24 months.

- 6.11. The project tender process involved conducting an expression of interest exercise via the Crown Commercial Service (CCS) Construction Works and Associated Services Framework Agreement in May 2021. This culminated in interest from four contractors and was compliant with Contract Standing Orders so a competitive tender was deemed the appropriate route for the appointment of a principle contractor.
- 6.12. Bidders were asked by strategic procurement to respond to a 50% price, 50% 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.
- 6.13. 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.
- 6.14. Contractor A's contract sum is in the exempt part of the report.
- 6.15. The recommendation is therefore to award the contract to Contractor A, as set out in the exempt report Appendix 2.
- 6.16. 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.
- 6.17. The tender assumes signing of the contract and site possession by November 2021, to allow start on site by in March 2022.

Appropriation of land

- 6.18. This report seeks approval to appropriate the site, Redlands, Summerhill Road (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.
- 6.19. The site is located within the grounds of the existing Council block of 1-20 Redlands, currently consisting of a 20-bay car park, a row of 6 garages and hardstanding, including a UK Power Network Substation which will remain. The initial assessment of the site recommended two blocks to 'bookend' the existing estate with an infill of mews-style family homes would best respond to the urban gaps within the existing streetscape and activate the frontage on West Green 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.
- 6.20. This report also seeks Cabinet approval to use the Council's powers under Section 203 of the Housing and Planning Act 2016 ("HPA 2016") to override easements and other rights of neighbouring properties infringed upon by the Redlands, Summerhill Road development. The types of rights that can be overridden include any easements, liberty, privilege, right or advantage annexed to land and

adversely affecting other land. This will include any right of light, or right of way enjoyed by a neighbouring landowner over the site. Any interference with such right may entitle the rightful owner to seek an injunction preventing the development from going ahead or seek damages for any right lost because of the interference. The Council recognises the potential rights of such third parties and will pay compensation where a legal basis for such payments is established.

- 6.21. 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. S203 will prevent an injunction being sought by a third party for breach of a right, the right will instead be converted into a right of compensation under section 204 of the HPA 2016.
- 6.22. 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.
- 6.23. 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"*.

8. Statutory Officers comments

8.1. Legal

Appropriation for Planning Purposes

- 8.1.1 The Council holds the site for housing purposes but will be carrying out a redevelopment which may affect third party rights. In order to override any third-party rights affecting the site, the Council will need to appropriate the site for planning purposes. The Council may appropriate land from housing purposes to planning purposes under Section 122 of the Local Government Act 1972 and in order to engage Section 203 HPA 2016. Section 122 LGA 1972 allows the Council to 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.

- 8.1.2 The requirements (of Section 122 LGA 1972) are that:
- 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.

8.1.3 The site does not contain open space.

Section 203 of the Housing and Planning Act 2016

8.1.4 By appropriating the land for planning purposes the Council is therefore able to engage the powers contained in Section 203 of the HPA 2016.

8.1.5 Under Section 203 the Council may carry out the development even if 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 appropriated for planning purposes (as defined under section s.246(1) of the Town and Country Act 1990);
- c) the authority could acquire the land compulsorily (under section 226(1) of the Town and Country Planning Act 1990) for the purpose of the building work. This is because the land will facilitate the carrying out of the development, re-development on or in relation to the land' or 'required for a purpose which is necessary to achieve the proper planning of an area in which the land is situated'. This requirement is satisfied as the Council considers that the development will lead to an improvement in the economic, social or environmental wellbeing of the areas as outlined in this report.

8.1.6 The requirements of Section 203 will be met once the appropriation takes place.

Appropriation for Housing Purposes

8.1.7 The Council will be seeking to appropriate the site back for housing purposes and be held within the HRA, following practical completion of the development. The Council can do so under Section 19 (1) of the Housing Act 1985. The legislation allows the Council as a local housing authority to 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.

8.1.8 The contract which this report relates to has been procured by a tender under the Crown Commercial Services Framework (Lot 1.1.2 - Building Works and Minor Associated Civil Engineering Works and Services) ("the Framework"). It is legally permissible for the Council to procure contracts by conducting a tender under the Framework as the Council is within the class of user permitted to use the Framework. Therefore, this is a compliant route to market.

8.1.9 In accordance with Contract Standing Order 9.07.1(d) Cabinet has authority to approve the award of the contract referred to in the recommendations.

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

8.2. **Procurement**

8.2.1 Strategic Procurement (SP) note that this report relates to the approval of Housing Construction Contract and Land appropriation at Redlands, Summerhill Road N15 .

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

8.2.3 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 Crown Commercial Services Framework (Lot 1.1.2 - Building Works and Minor Associated Civil Engineering Works and Services).

8.2.4 The Council received 4 tenders from 4 contractors with further clarifications needed to achieve the final price.

8.2.5 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.

8.2.6 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 part of this report.

8.3. **Finance**

8.3.1 The scheme will deliver 8 social rent units on completion at a total construction cost outlined within the Exempt part of this report.

8.3.2 The preferred contractor was selected by means of a competitive tender that assessed bidders based on 50% quality 50% price.

8.3.3 This scheme is contained in the current HRA financial plan and MTFs, and the total cost will be met from the approved new build capital budget.

8.3.4 There are no transfer values associated with appropriation from housing purposes to planning purposes and back, after practical completion, as the land is held in the HRA.

8.3.5 Further Finance comments are contained in the Exempt report Appendix 2.

8.4. **Equality**

8.4.1 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act.
- Advance equality of opportunity between people who share those protected characteristics and people who do not.
- Foster good relations between people who share those characteristics and people who do not.

8.4.2 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

8.4.3 The proposed decision relates to new build works to provide six new Council rented homes at Redlands, Summerhill Road N15. 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.

8.4.4 As part of the s105 consultation with residents around the removal of the existing car park, an EqlA was completed. As part of the new housing development, two wheel-chair parking spaces will be included in the design which will have a positive impact for residents with disabilities. In addition, four additional parking spaces will be put in place to mitigate concerns around access to parking spaces locally.

8.4.5 With regard to the land appropriation, it is noted that no third-party breaches are foreseen. With regards to the contract appointment, 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 – Redlands, Summerhill Road.
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).