

Report for: Cabinet Member Signing – 8 March 2021

Title: Approval of Housing Construction Contract and Land Appropriation at Remington Road

Report

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

Lead Officer: Robbie Erbmann, Assistant Director for Housing

Ward(s) affected: Seven Sisters

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 local residents, to deliver forty-six new Council homes for Council rent on Council land consisting of twelve one-bedroom, sixteen two-bedroom, fourteen three-bedroom and four four-bedroom with five of these homes being fully accessible for wheelchair-users.
- 1.2. In order to facilitate this, Cabinet is being asked to approve use of the Council’s powers to appropriate the land for planning purposes and to override any easements.
- 1.3. Cabinet is asked in light of a formal procurement exercise to approve the appointment of Formation Design & Build Ltd (exempt - further details in exempt report), to deliver these new Council homes on vacant land.

2. Cabinet Member Introduction

- 2.1. Not applicable.

3. Recommendation

- 3.1. The Cabinet Member is asked:
 - 3.1.1. To approve the appointment of Formation Design & Build Ltd to undertake building works to provide a total of forty-six Council rented homes at Remington Road for a total contract sum as set out in the exempt appendix; and to approve the client contingency sum set out in the exempt part of the report.
 - 3.1.2. To approve the appropriation of the land at Remington Road highlighted in the red line boundary plan 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 6.7 of the report.
 - 3.1.3. To approve 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 Remington Road development, under planning

permission Ref: HGY/2021/2882.

- 3.1.4. To delegate to the Director of Housing, Regeneration and Planning, after consultation with the Director of Finance and the Cabinet Member for Housing and Estate Renewal, authority to make payments of compensation as a result of any infringement arising from the development and payable as a result of recommendation 3.1.3, within the existing scheme of delegation.
- 3.2. To approve the appropriation of the land at Remington Road (edged red in the boundary plan 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. On July 2019 Cabinet included the land at Remington Road into the Council's housing delivery programme. This scheme has subsequently been granted planning consent and is ready to progress to construction. This report therefore marks the third, and final, Member led decision to develop on this site.
- 4.2. Following a formal procurement process, a contractor has been identified to undertake these works.

5. Alternative options considered

- 5.1. It would be possible not to appoint a contractor to develop this site for the Council. 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 Westworks Development and Construction Dynamic Purchasing System, using JCT Design & Build 2016 with amendments. An alternative option would have been to do a direct appointment, but this option was rejected due to the estimated contract value of the scheme.
- 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.

6. Background information

Remington Road development site

- 6.1. The site includes an underused piece of green land located adjacent to Remington and Pulford Road and is bordered to the north by Network Rail land. Located to the south of the site is a six-storey residential building, under management by Homes for Haringey. To the far west of the site is a row of twenty garages, with the southeast comprised of 2 storey terraced houses.
- 6.2. This land is owned by the Council and held in the HRA.
- 6.3. On 19 July 2019, Cabinet approved the inclusion of the Remington Road site into the Council's housing delivery programme to determine its feasibility and capacity for the delivery of new homes on the basis that, if appropriate, its development would be progressed through to planning consent.
- 6.4. Designs have been developed that will deliver twelve one-bedroom, sixteen two-bedroom, fourteen three-bedroom and four four-bedroom with five of these homes being fully accessible for wheelchair-users all for Council rent.
- 6.5. The development of the Remington Road site can be expected to provide training and employment opportunities to local residents. The planning permission for the site requires the submission for an Employment and Skills Plan (ESP) prior to commencing construction. The Council as developer and the appointed build contractor will set out in the ESP the planned objectives and targets for local training and employment opportunities to be created through the construction period, alongside a commitment to creating local economic value through procuring materials and services from local suppliers.
- 6.6. Initial training and employment figures targeted by the recommended Contractor provides 20% of the peak on-site workforce to be Haringey residents. Provision of pre-employment training to Haringey residents as well as career education workshops for secondary schools in Haringey.
- 6.7. Skills-Based Training to the twenty percent (20%) and at least five percent (5%) of these to comprise Traineeships and liaison with the assigned officer to help suppliers and businesses which are based in the Borough to tender for such works as may be appropriate for them to undertake and or support locally based social enterprises.

Engagement and Consultation

- 6.8. As a result of the pandemic the scheme proposals were presented to the public virtually via Microsoft Teams.
- 6.9. The loss of amenity (vacant land adjacent to the railway) at Remington Road obliges the Council to consult in line with section 105 of the Housing Act 1985 ('section 105'). The section 105 consultation period commenced on 9th November 2020 and ran until 13th December 2020. The Council consulted six hundred seventy-one (671) households. In addition to consulting with secure tenants as required by law, the above figure also includes resident leaseholders, non-resident leaseholders and freeholders. The Council consults leaseholders as part of Section 105 consultations as a matter of good practice. Of the six hundred seventy-one (671) homes that received the section 105 pack inviting responses,

thirty-nine households formally responded.

- 6.10. The Housing Engagement Team held two engagement events for residents on Wednesday 25 November (13:00 to 14.30) and Wednesday 2 December (18:00 to 19:30).
- 6.11. A letter advertising the event and asking for views was sent to residents in the area surrounding the site. The feedback from consultation did not require any major configuration to the design.
- 6.12. The scheme was submitted to planning on the 17 September 2021 and residents were formally consulted as part of this process. Planning committee approval of the scheme was granted on the 10th January 2022.

The Build Contract

- 6.13. This report is seeking final approval of the construction contract in order to enable the new build works to commence.
- 6.14. The Remington Road scheme has been designed up to stage 3 of the Royal Institute of British Architects Plan of Works 2019. Since planning approval has been granted, a contractor is now needed to undertake the technical design and new build works. It is currently anticipated that the contract period will be twenty months.
- 6.15. The project tender process involved conducting an expression of interest exercise via the LCP in August and October 2021. Due to the limited number of interests received from several build contractors, a competitive tender was conducted via the Westworks DPS. A competitive tender is considered the preferred route for the appointment of a principal contractor.
- 6.16. Contractors were asked to respond to a 50% quality 50% price assessment. Full tender sum analysis based on the cost consultants estimate has been provided in Appendix 2, which is exempt due to the commercially sensitive nature of this information.
- 6.17. Costs were evaluated independently by the Project Team's Employers Agent/Quantity Surveyor to ensure value for money in line with current market trends.
- 6.18. The contract is to be awarded on a fixed price basis. It includes new build works, site establishments, site enabling works, management costs and includes overheads and profits and there is a defects and liability period of 12 months.
- 6.19. The tender assumes signing of the contract and site possession by 25 March 2021, as the tender offer remains open for sixteen weeks from the return date.

Appropriation of Land

- 6.20. This report seeks approval to appropriate the Remington Road site (outlined in red in the plan 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.

- 6.21. The site is currently held for housing purposes and is vacant and underutilised. It had been previously cleared and secured but has historically been a location for fly tipping.
- 6.22. The appropriation of the land and the subsequent development will enable the Council to improve the existing environment, repair the urban grain and create new affordable homes for local people.
- 6.23. This report also seeks Cabinet approval to use the Council's powers under section 203 of the Housing and Planning Act ('HPA') 2016 to override any easements, liberty, privilege, right or advantage of neighbouring properties infringed upon by the Remington Road development. 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. The use of power of the section 203 for the development site would override potentially enforceable third-party rights that may prevent the construction of the development. The power use section 203 HPA will instead convert those rights into rights for compensation for the loss of that right. Appropriation of the land and the use of section 203 powers to override easements would prevent this.
- 6.25. We have no reason to believe that any such rights will be significantly infringed by this development.
- 6.26. To appropriate the land at this development site for housing purposes on completion of the development will enable the Council to then offer these homes for rent thereby positively contributing to the demand for affordable housing the Borough.
- 6.27. **Procurement Process**
- 6.28. The contract was tendered via the Westworks Development and Construction DPS on 25 November 2021.
- 6.29. Three (3) tender submissions were received by the tender deadline date on 20 January 2022.
- 6.30. Tender submissions were checked for compliance and completeness by the Strategic Procurement team on 20th January 2022. All were found to be compliant and complete and were taken forward to evaluation.
- 6.31. The tenders were evaluated for Quality and Price as set out in the ITT document.
- 6.32. Following the evaluation process, the total overall Quality and Price scores were combined to provide the ranking of the bidders in accordance with the Most Economically Advantageous Tender (MEAT) and as outlined in the tender documents.
- 6.33. The information below summarise the overall tender scores achieved by each Bidder in line with the tender evaluation criteria of 50% Price and 50% Quality as set out in the Invitation to Tender document.

Supplier	Quality Score (50%)	Price Score (50%)	Total Score (100%)
Formation Design & Build Ltd	45.0%	48.3%	93.3%
Bidder B	34.0%	47.6%	81.6%
Bidder C	23.0%	50.0%	73.0%

7. Contribution of 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.

Statutory Officers' Comments

8. Legal

8.1. 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 all 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 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 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.

Contracts Legal Comments

8.1.8 The works are above the threshold where the rules on tendering as set out in the Public Contracts Regulations 2015 (the Regulations) apply.

8.1.9 The Council has accessed the Westworks Development and Construction DPS (DPS). This is a permitted procurement route under Regulation 34 of the Regulations.

It is also provided for under the Council's Contract Standing Orders (CSO 7.01 (b)).

8.1.10 The Head of Legal and Governance (Monitoring Officer) has been advised that the procurement has been conducted in accordance with the Regulations and with the process set out in the DPS for appointment of contractors.

8.1.11 The award of this contract will be a Key Decision as it is over £500,000 in value. Therefore compliance with the Council's governance processes including publication in the Forward Plan is required.

8.1.12 The Cabinet has power to approve the award under CSO 9.07.1 (d) (award of contracts of £500,000 and more).

9. Procurement

- 9.1. Strategic Procurement (SP) note that this report relates to the approval of Approval of construction contract and land appropriation at Remington Road N15 6SR
- 9.2. SP support the recommendations in this report in accordance with Contract Standing Order clause 7.01 (b)
- 9.3. Pursuant to CSO 7.01 (b) and Regulation 34 of the Public Contract Regulations 2015, SP confirms that tenders were invited to tender through the Westworks Development and Construction Dynamic Purchasing System
- 9.4. The Council received 3 compliant tenders. The tenders were reviewed and evaluated independently by a quality panel and the pricing was assessed separately by the Employers Agent. Bidder A has scored the overall highest as set out in the Exempt part of this report
- 9.5. SP support the recommendations within this report and have no objections with awarding this Contract to Bidder A for the value outlined in the Exempt part of the report

10. Finance

- 10.1. The Remington scheme will deliver 46 new council rent homes.
- 10.2. The preferred contractor was selected via council approved tender framework.
- 10.3. The proposed total cost to completion can be contained within the HRA financial plan.
- 10.4. Further finance comments are contained in Appendix 2 exempt report.

11. Equality

- 11.1. 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.
- 11.2 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.
- 11.3 The proposed decision relates to new build works to provide forty-six new Council rented homes at land adjoining Remington Road and Pulford Road, N15: this includes the appointment of a contractor, the appropriation of land adjoining Remington Road and Pulford Road, and approval of plans to override easements and other rights of neighbouring properties.
- 11.4 The decision will increase the supply of Council rented homes 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. It is further noted that five of the forty-six homes are fully accessible for wheelchair users which will benefit residents with certain disabilities. As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

- 11.5 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. Appropriate contract management arrangements will be established to ensure that the delivery of the major works does not result in any preventable or disproportionate inequality.

12. Use of appendices

Appendix 1 – Red line boundary Remington Road.

Appendix 2 – NOT FOR PUBLICATION - Exempt financial information relating to the award of a contract for the construction works on Remington Road.

13. Local Government (Access to Information) Act 1985

- 13.1. 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 it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).