

**Report for:** Cabinet Member Signing – 8 March 2022

**Title:** Letting of Build Contract for Topham and Risley

**Report**

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

**Lead Officer:** Robbie Erbmann, 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, in the light of consultation with local residents, to build four new Council homes on Council-owned land at Topham Square and Risley Avenue, in the White Hart Lane Ward. The homes comprise 1 two-bedroom house, 2 three-bedroom houses and 1 four-bedroom house, all of which will be let at Social Rents.
- 1.2 In order to achieve this, Cabinet is being asked to agree the appropriation of 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 am delighted to approve the construction of another four new Council homes for lettings at Council rent. The fact we are building new Council houses with three and four bedrooms is good news for the many overcrowded families in Haringey. High thermal insulation, air source heat pumps and photo-voltaic panels in all the homes will not only contribute to the development's net zero carbon target but also help to prevent fuel poverty.

**3. Recommendations**

The Cabinet Member is asked:

- 3.1 To consider 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 the report, and the wider community engagement set out in the report.
- 3.2 To approve the direct appointment allowed by Contract Standing Order 10.01.2.d of NFC Homes Limited to undertake the new build works to provide a total of four new homes at Topham Square and 15-25 Risley Avenue car park for the contract and contingency sum set out in the exempt report attached as Appendix 2.
- 3.3 To approve the appropriation of the land at Topham Square and 15-25 Risley

Avenue car park (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 section 6 of this report.

- 3.4 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 Topham Square and Risley Avenue development under planning ref: HGY/2022/0018.
- 3.5 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 in the event that any infringement arises from the development and the recommendation 3.1.3, within the existing scheme of delegation.
- 3.6 To approve the appropriation of the land at Topham Square and Risley Avenue Road car park (edged red in the 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 the Decisions**

- 4.1. The land at Topham Square and Risley Avenue was approved by Cabinet in July 2019 to be included in the Council's Housing Delivery programme. A planning application was submitted on 4 January 2022 and a decision is expected by 1 March 2022. Subject to planning approval, the scheme is ready to progress to the construction phase. This report therefore marks the third, and final, Members' decision to develop on these sites.
- 4.2. Direct appointment of the contractor in this case is justified because it is in the Council's overall interests. Current market conditions are uncertain and difficult, and there is significant risk of a lack of interest in this scheme. The scheme's viability depends on meeting deadlines attached to grant funding and 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 approached and asked to submit a tender return.
- 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 third party rights such as 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 land 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 the new Council homes at Council rent.
- 4.4. The proposals will improve security for new and existing residents and alleviate potential anti-social behaviour and fly tipping attracted by an unsecured car park.

## **5. Alternative options considered**

- 5.1. It would be possible not to develop this site for housing. 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 the time constraints involved in delivering this scheme. Instead, this opportunity will be 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 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 appropriating it for planning purposes and 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 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**

### **Topham Square and Risley Avenue Car Park**

- 6.1. As shown in the plan in Appendix 2, Topham Square and Risley Road car park is situated within White Hart Lane Ward, part of the Tower Gardens conservation area and is bordered on all sides by residential properties. The site is located to the northern side of Risley Avenue and comprises a car parking area behind 15-25 Risley Avenue along with the hardstanding area immediately to the north, which is partly occupied by an electricity substation. White Hart Lane Overground Station and Wood Green Underground Station are the nearest stations to the site, which has a Public Transport Accessibility Level (PTAL) rating of 3.
- 6.2. The site is Council owned and held in the Housing Revenue Account.
- 6.3. In July 2019, Cabinet approved the inclusion of the Topham Square and Risley Avenue car park 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 for 4 social rented houses on the site were submitted for planning approval on 4 January 2022.

### **Engagement and Consultation**

- 6.5. As a result of the pandemic the scheme proposals were presented to the public virtually via Microsoft Teams.
- 6.6. The loss of amenity at Topham Square Risley Avenue car park obliges the Council to consult in line with Section 105 of the Housing Act 1985. The Section 105 consultation period commenced on 17<sup>th</sup> August 2020 and ran until 22<sup>nd</sup> September 2020. Of the fifty-nine homes that received the section 105 pack inviting responses, nine households formally responded.
- 6.7. Two respondents stated that the proposed removal of the car parking bays breaches the lease agreement of secure tenants/leaseholders in the area. Secure tenancies and lease agreements were checked, and no evidence has been found that parking rights were conferred on residents in the area.
- 6.8. One respondent stated that the removal of parking facilities would have a detrimental impact on their daily lives. This included specific impacts on older residents and those with disabilities who require parking medical care or family related travel.
- 6.9. One resident proposed that disabled parking spaces should be included on the new site, one resident suggested the parking area should be converted into a children's play facility rather than housing, and one resident suggested a three-storey car park should be built on the site instead.
- 6.10. The respondents further stated that it would be difficult and costly to park in the surrounding roads and there would be difficulty getting permits for work vehicles.
- 6.11. In response to this feedback, a full parking survey was carried out on two separate weekday nights when residents are home. The survey concluded that the adjoining streets covered by a controlled parking zone have capacity to accommodate any additional parking that may arise from the proposed development.
- 6.12. Topham Square and Risley Avenue has good pedestrian and cycle links, and its Public Transport Accessibility Levels (PTAL) rating of 3 indicates that it has moderate accessibility to the public transport network, taking into account walking distance and service availability.
- 6.13. Two wider community engagement meetings on the proposals were held on Microsoft Teams on Tuesday 19<sup>th</sup> October and Friday 29<sup>th</sup> October 2021 and one in-person event on Friday 15<sup>th</sup> October 2021.
- 6.14. The key comments raised were again the perceived lack of parking spaces in the surrounding roads.

- 6.15. The Council believes that the results of the transport assessment and parking survey show that the additional parking demand created by the loss of the existing car park can be absorbed on-street.
- 6.16. The proposed development is car free.
- 6.17. The Council is satisfied that its parking permit scheme is accessible for residents. The Council will provide advice and offer assistance to residents who wish to apply for a street parking permit.
- 6.18. In relation to the specific impact of losing the car park on older residents and residents with disabilities, the Council is satisfied that proceeding with the development is a proportionate means of achieving a legitimate aim. Individuals with protected characteristics are overrepresented on the waiting list for a council home and stand to benefit from the construction of new homes.
- 6.19. The scheme was submitted for planning on 4 January 2022 and residents were formally consulted as part of this process. Planning committee approval of this scheme is expected on 1 March 2022.

### **The Build Contract**

- 6.20. This report is seeking final approval of the construction contract to enable the new build works to commence.
- 6.21. The housing scheme at Topham Square and Risley Avenue car park been designed up to Stage 3 of the Royal Institute of British Architects (RIBA) Plan of Works 2019. If planning approval is granted, a contractor will need to undertake detailed technical design and building works. It is currently anticipated that the contract period would be 68 weeks.
- 6.22. 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 puts 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.
- 6.23. The selected contractor, NFC Homes Limited was asked to respond to a 100% price assessment.
- 6.24. NFC Homes Limited estimated total contract sum is set out in Appendix 2.
- 6.25. Cost was evaluated independently by the Project Team's Cost Consultant to ensure value for money in line with the current market.
- 6.26. 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.
- 6.27. The tender assumes signing of the contract and site possession by 31 March 2022

to allow start on site by Q4 2021/2.

- 6.28. This development at Topham Square and Risley Avenue car park site is expected to deliver significant social value and across all their sites in the borough.
- 6.29. NFC Homs LTD will provide skills training, employment opportunities and apprenticeships to local residents. They have been working jointly with Haringey to devise a Construction Stage Employment Scheme Plan (ESP) with a Histogram detailing out the above opportunities across several sites in the borough. They will also arrange a site visit during Build UK Open Doors week in March/April 2022 or National Careers Week to highlight the variety of careers in construction and pathways into the industry.
- 6.30. NFC Homes LTD have agreed with Haringey to refurbish and fit out an old shop in Park Lane into a food bank free of charge and will manage the build using selected members from their supply chain who has worked on Haringey schemes. This is due to commence in May 2022.
- 6.31. NFC Homes LTD sponsor Haringey Rhinos Youth Team. This club not only teaches Rugby to vulnerable children, instilling life skills and value such as teamwork, hard work, commitment, and leadership, but is also provides free hot meals after each session, often the only hot meal a child has each day and the most nutritious meal they have each week.
- 6.32. This development provides the opportunity to create four family houses designed to meet current good practice and the GLA's London Plan design requirements. The proposal is in line with national and local housing policy which promotes the development of housing with priority to re-using brownfield sites within urban areas. This scheme has been designed to minimise impact on the surrounding residents and respect the scale and Character of the Tower gardens Conservation Area.
- 6.33. This project contributes to creating a more sustainable community by following best practice in respect to inclusive design, including Lifetime Homes Standards and Building Regulations Approved Document part M4(2).

### **Appropriation of land**

- 6.34. This report seeks approval to appropriate the site, being the Topham Square and Risley Avenue car park (outlined in the plan attached at Appendix 2), 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.
- 6.35. Topham Square and Risley Avenue site is a car park. The surrounding area is residential in nature accommodating a range of property types and styles. The site is located with adequate access to public transport and local shopping facilities. The proposed development seeks to optimise the site to accommodate one two-bedroom, two three-bedroom and one four-bedroom houses.
- 6.36. This report also seeks Cabinet approval to use the Council's powers under Section 203 of the Housing and Planning Act 2016 to override third party rights such as

easements and other rights of neighbouring properties infringed upon by the Topham Square and Risley Avenue car park 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. Any development which interferes with those rights 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.

- 6.37. The public consultation suggests that no third-party rights would be infringed by the development. The engagement events held on 19<sup>th</sup> and 29<sup>th</sup> October 2021 did not raise any concerns that there were possible infringements of third-party rights.
- 6.38. The Council has confirmed that no neighbouring properties have easements in relation to the site.
- 6.39. The Council is therefore confident that during the development of this site there will not be any potential infringements of the third-party rights outlined here. In the event that any such right was infringed, the Council is confident that it would not breach rights to private and family life.
- 6.40. If an injunction is sought by a third party for breach of any such right, then, if successfully claimed, the right will be converted into a right of compensation for loss of that right. Based on the circumstances, it is unlikely that there will be any claims. In the event of a claim, the level of compensation is unquantifiable until such a claim is made; however, 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**

### **Procurement**

- 8.1. Strategic procurement notes the content of the report and support the use of a direct award via the LCP lot 1.1 B. The structure of the framework allows direct awards up to £1.5m, and above that figure in exceptional circumstances. This scheme is considered as exceptional because we wish to secure a fixed build

price in volatile market circumstances where prices have risen rapidly, and the direct approach assists by speeding up the procurement process.

## **Legal**

### **Appropriation for Planning Purposes**

- 8.2. 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.
- 8.3. The requirements (of Section 122 LGA 1972 are met because:
  - 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.
  - d) The site does not contain open space.

### **Section 203 of the Housing and Planning Act 2016**

- 8.4. By appropriating the land for planning purposes, the Council is therefore able to engage the powers contained in Section 203 of the HPA 2016.
- 8.5. 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.
- 8.6. The requirements of Section 203 will be met once the appropriation takes place.

### **Appropriation for Housing Purposes**

- 8.7. 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.

## **Finance**

- 8.8. The Topham Square/Risley Avenue scheme will deliver four homes to be let at social rent.
- 8.9. The preferred contractor was selected through the LCP Major Works 2019 Framework and priced as a direct appointment.
- 8.10. This scheme is contained in the current HRA financial plan and MTFS, and the total estimated cost to completion can be contained in the HRA financial plan.
- 8.11. Further finance comments are contained in the exempt report.

## **Equalities**

- 8.12. 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.
- 8.13. 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.
- 8.14. The proposed decision relates to new build works to provide four Council rented home at Topham Square and Risley Avenue car park. 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](#). It is noted that these new homes are designed to meet M4(2) standards without a lift. They will have a level entrance threshold at the ground floor. The entrance hall has a clear width of more than 1200mm and the ground floor has a W.C. that can be converted to include a Part M compliant shower. As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

- 8.15. It is noted that during the S105 consultation, three residents raised concerns about the impact of removing the car park including due the specific impact on older residents and those with disabilities. It is also noted that in response to these concerns, the council has undertaken a full parking survey which concluded that the adjoining streets covered by a controlled parking zone have capacity to accommodate any additional parking that may arise from the proposed development. In summary, the decision is a proportionate means of achieving a legitimate aim insofar as individuals with protected characteristics are overrepresented on the waiting list for a council home and stand to benefit from the construction of new homes, while appropriate steps are being taken to mitigate any potential negative impact on individuals with protected characteristics that may be caused by the reduction in car park accessibility.
- 8.16. 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 relating to the award of construction contract to NFC Homes Limited for new build works at Topham Square and Risley Avenue

**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. This report is not for publication as it contains information classified as exempt under 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).