

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

**Title:** Chocolate Factory Phase 1 - Approval to Let Construction Contract

**Report**

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

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

**Ward(s) affected:** Noel Park

**Report for Key/**

**Non Key Decision:** Key Decision

**1. Describe the issue under consideration**

- 1.1. This report seeks approval to appoint the recommended Contractor at the recommended contract sum set out at Appendix 3, to undertake the new build construction works to create eighty (80) Council rented homes and 356 m<sup>2</sup> of affordable workspace for the scheme known as Chocolate Factory Phase 1 and to appropriate the land for planning purposes to facilitate the development.
- 1.2. At 80 Council Rent homes, this will be the Council's most significant direct delivery scheme to date.

**2. Cabinet Member Introduction**

- 2.1. We have the chance tonight to put 80 new Council homes at the heart of the Wood Green Cultural Quarter. I'm very pleased to recommend that Cabinet should approve these plans.
- 2.2. The homes proposed here have been designed to the highest standards of energy efficiency, and the development will be net zero-carbon. In time, they will all be connected to the District Energy Network, harnessing energy from otherwise wasted sources to reduce emissions and protect our residents against fuel poverty. All homes will have access to a shared podium garden and a public courtyard with new trees, planting, and landscaping.
- 2.3. The Council has worked collaboratively to make sure the development also preserves and enhances facilities for the thriving local arts, creative, and small business community.

**3. Recommendations**

Cabinet is asked:

- 3.1 To approve the appointment of the recommended Contractor (identified in the exempt part of the report – Appendix 3) to undertake the new build works for the scheme known as the Chocolate Factory Phase 1 for a contract sum set out in Appendix 3. Please refer to paragraph 16 of Appendix 3.

- 3.2 To approve the appropriation of the land at the Chocolate Factory site (edged red in the plans attached at Appendix 2) from general purposes to planning purposes under Section 122 of the Local Government Act 1972 as they are no longer required for the purpose which they are currently held, and for the purpose of carrying out development as set out in section 6 of this report.
- 3.3 To approve the appropriation of the land at the Chocolate Factory site (edged red in the plan attached at Appendix 1) from planning purposes to housing purposes under Section 19 of the Housing Act 1985, after practical completion of the construction works.
- 3.4 To approve the appropriation of the land at the Chocolate Factory site (edged red in the plan attached at Appendix 1) from the General Fund to the HRA (at practical completion of the construction works) at the value of £500,000.00; representing the apportioned purchase and associated acquisition costs of the Chocolate factory site.
- 3.5 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 Chocolate Factory Phase 1 development, under planning permission Ref: HGY/2017/3020 and by the subsequent s96a amendment to this permission, under planning Ref: HGY/2021/0624.
- 3.6 To delegate 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.
- 3.7 To note a total scheme-to-completion cost is contained at Appendix 3.

#### **4. Reasons for decisions**

- 4.1. The acquisition of the head leases held by Workspace over Council owned freehold land at the Chocolate Factory site and the neighbouring Mallard Place site were approved by Cabinet in October 2020. The intention was both sites would ultimately enter the Council's housing delivery programme, with the Chocolate Factory Phase 1 progressing first as it already had an extant planning consent. A s96a planning amendment has subsequently been approved to facilitate the development of the site (given the Council is acquiring part of the wider Chocolate Factory site with Workspace developing the rest).
- 4.2. Completion of the acquisition of the two head leases took place on 10<sup>th</sup> February 2022. The Council's site (known as the Chocolate Factory Phase 1) is now ready to progress to construction, with priority given to commencing development of the affordable housing. This report therefore marks the second, and final, Member-led decision to develop this site for social housing.
- 4.3. Following a formal tender process, a contractor has been identified to undertake these works.

- 4.4. The head leases will be merged with the freehold title which is held in the General Fund and appropriation of the Chocolate Factory Phase 1 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 developments. Section 203 converts the right to seek an injunction into a right to compensation. The Chocolate Factory Phase 1 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 eighty new Council homes at Council rent.
- 4.5. The development of new Council homes and affordable workspace at the Chocolate Factory Phase 1 will also serve as the Council's first direct delivery project to contribute towards the objectives and ambitions of the 'Wood Green Cultural Quarter', a Council-led plan to coordinate the regeneration and economic development of the area to the west of the High Road in Wood Green.
- 4.6. These recommendations are also necessary at this time to support the Council's ambition to achieve 1000 starts on site before the end of March 2022, with GLA grant funding for the site also being contingent upon achieving a start on site by this date.

## **5. Alternative options considered**

- 5.1. It would be possible not to develop the Chocolate Factory Phase 1 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 and considering the rationale behind Cabinet's decision to acquire the head leases in the first place.
- 5.2. This opportunity was procured via a competitive tender using the Westworks Development and Construction Dynamic Purchasing System. The Council previously issued a tender via the London Construction Programme (LCP) Major Works 2019 Framework Agreement, the recommended route for a contract of this value, but this resulted in only a single tender being returned, which did not meet the Council's requirements, principally in relation to the construction cost. The choice of an alternative framework was considered and ultimately utilised only after first testing the Council's own procurement framework.
- 5.3. The Council could continue with the scheme without appropriating the site for planning purposes, but this would risk the proposed developments 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. When seeking planning permission, Workspace actively engaged with local residents about the development of these sites 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. The Housing Delivery Team has also engaged with Ward Members and the Lead Member for Housebuilding, Place-making and Development, and ensured local

stakeholders have been briefed on the progress of the scheme since becoming involved with the project. For these reasons, this option was rejected.

- 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**

- 6.1 Located in the Wood Green Cultural Quarter, the existing Chocolate Factory is described as 'one of the area's key buildings' in the Wood Green Area Action Plan. Formerly the main factory producing Barratt's sweets, the Chocolate Factory building itself is owned by Workspace, a company that offers office, studio and workshop space for rent. Alongside the main building, there are a number of smaller studios and outbuildings previously let by Workspace (mostly now vacant), as well as a large car park.
- 6.2 Workspace own the freehold to the eastern part of the site, and until recently controlled the western part of the site under a long leasehold over land owned freehold by the Council. Workspace intend to refurbish the main Chocolate Factory building, and redevelop the rest of the eastern section of the site for mixed use (residential and commercial). As such, in early 2019 they sought and were granted a planning permission to progress their scheme.
- 6.3 The Council negotiated a deal with Workspace to unlock the opportunity for the Council to control the LBH freehold land at the Chocolate Factory with the benefit of a detailed planning permission granted on 15th February 2019, and also to acquire Workspace's head lease over the neighbouring Council freehold land at Mallard Place. This was approved by Cabinet in October 2020. The completion of the contract to acquire Workspace's leases over the LBH freehold land was subject to the following in relation to the Chocolate Factory site:
- Approval of a s96a (non-material) planning amendment
  - A slight redrawing of the freehold boundaries
  - A revision to the s106 agreement.
- 6.4 The acquisition of the headleases was completed on 10<sup>th</sup> February 2022.
- 6.5 The Council now has full control over its unencumbered freehold interest which is held within the General Fund. The Council's portion of the Chocolate Factory site has the benefit of an extant planning permission to develop 137 homes (80 within Block E2, which forms Phase 1, and 57 within Block D, which is on land that will form part of a later phase of development) and affordable commercial floorspace. The plan at Appendix 2 shows the blocks labelled E2 and D.
- 6.6 At Mallard Place, there is no planning permission, but an in-situ tenant (Area 51 Education Ltd) will pay a regular rent to the General Fund, as well as the potential to develop the site in future alongside the development of the Block D area. There is also the potential in include for the redevelopment of adjacent sites on Coburg Road and Clarendon Road.

- 6.7 A recent non-material amendment to the planning permission (granted on 13th September 2021) changed the tenure of the consented homes on the Council's portion of the Chocolate Factory land as follows:

	<b>Initially Consented Mix</b>	<b>s96a Approved Mix</b>
Block E2	32 London Affordable Rent homes	73 Social Rent homes
	40 London Living Rent homes	
	8 Private homes	7 Private homes*
Block D	57 Private homes	57 Private homes

*\*The Sale Agreement with Workspace anticipates that in the future Workspace intend to increase the quantum of residential units on their part of the Chocolate Factory site, specifically on the section currently occupied by the Parma House building. This will increase the requirement for affordable housing across the overall site. The Agreement provides for the Council to absorb this additional requirement by converting the 7 homes currently designated as private sale tenure in Block E2 to Social Rent. We have therefore assumed that these 7 units are to be constructed and provided for Social Rent in our viability modelling and contractor procurement, although they are noted as 'Private' in the current s96a permission. The reason for the change from 8 Private units to 7 (albeit in reality planned to be delivered for Social Rent) was to maximise our provision of family-sized homes and allow for the delivery of a 4 bedroom ground floor duplex home.*

- 6.8 The current planning permission for block D on the Chocolate Factory site provides for 57 mostly small homes for private sale, and there is, as noted above, potential to re-plan the redevelopment of this part of the site to include the Council's land at Mallard Place (and potentially other adjacent sites). The Council plans to bring forward a second phase of development, which considerably re-plans the proposals for this area, to better meet the Council's priorities in terms of residential tenure and size of homes. This will be brought forward separately for the appropriate Council approvals in due course.
- 6.9 Therefore, in the context of the Council's target of achieving 1000 Social Rented starts on site by March 2022, only Block E2 contributes towards this target. Hence the Housing Delivery Team has tendered for a main Contractor to build the 80 social rented homes in Block E2 alone at this stage in order to expedite the delivery of affordable housing (alongside the proposed affordable workspace within this block). Of the 80 units being delivered, 20 are larger family sized homes (3+ bedrooms).
- 6.10 New training opportunities, local investment and jobs will be generated through the development of the Chocolate Factory site. The S106 agreement associated with 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 recommended 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.

- 6.11 Initial training and employment figures targeted by the recommended Contractor provides for: 20% of the peak on-site workforce to be Haringey residents with 25% of residents employed on site to be full-time apprentices, provision of pre-employment training to Haringey residents as well as career education workshops for secondary schools in Haringey.
- 6.12 The recommended Contractor has also committed to regular engagement with the Haringey Employment and Recruitment Partnership and to actively engage with local business and to encourage them to tender for work and services relating to the construction works.
- 6.13 As part of the broader support for the regeneration of the Wood Green Cultural Quarter, the Council is working to secure and support the crucial existing cultural and community spaces and the associated social and economic networks that are already driving local enterprise and growth. As part of the first phase of development of the Chocolate Factory site, the Council will be delivering new affordable workspace within the lower floors of block E2. This will provide 356 m<sup>2</sup> of affordable workspace (to be let at sub-market commercial rent). The Council will prepare a more detailed proposal for the marketing and letting of this space in due course, but we are committed to working with existing local affordable and creative workspace providers to ensure that this space is appropriate for local businesses who provide valuable local services but could not otherwise afford commercial space in the area. The S106 agreement associated with the planning permission for the site sets out specific requirements for the affordable work space and requires that 6 months prior to practical completion, local workspace provider Collage Arts are first offered the opportunity to take on a lease for the space.
- 6.14 Workspace and the Council's Housing Delivery team have progressed with the submission of details and plans to the Local Planning Authority (LPA) for approval of various pre-commencement planning conditions. The varied S106 agreement (following the approval of the S96a amendment to the planning permission, to reflect the split in land ownership between the Council and Workspace) was recently completed following the conclusion of the land transfer agreement between both parties. The original planning permission was issued in early 2019, and as such Workspace and the Council are working together to ensure this is implemented within the 3 year timeframe set by the decision notice. There are a number of S106 obligations and planning conditions still required to be completed and/or approved by the LPA prior to construction works starting on site. In the meantime, demolition works are progressing on-site, with these works being instructed by Workspace.
- 6.15 Workspace have instructed demolition contractors to commence the demolition works down to ground slab level across the site, including on Council land. The Council will reimburse Workspace for the relevant demolition costs, and Clifford Devlin (Workspace's demolition contractor) is operating on the Council's land under an access license.

## **7. The Build Contract**

- 7.1. This report is seeking the approval for the award of a building contract to the recommended Contractor to undertake the construction works for the Chocolate Factory Phase 1 scheme.
- 7.2. In preparation of their planning application, Workspace instructed the design of the scheme up to Stage 2 of the Royal Institute of British Architects (RIBA) Plan of Works 2019. With planning permission secured and the Council in control of the site, a Contractor needs to be appointed to complete the construction works.
- 7.3. In order to select an appropriate Contractor a tender process was commenced in June 2021, via the LCP ME 2019 framework, which involved a soft market testing presentation. It was agreed with the Council's Strategic Procurement team that sufficient interest was expressed to facilitate a competitive tender – four of the nine eligible parties on the relevant framework lot indicated their willingness to tender.
- 7.4. At the close of the tender process only one Contractor submitted a proposal and following a review of the returned tender the Housing Delivery team agreed with Strategic Procurement to re-tender the works.
- 7.5. The second tender process was via Westworks with tender documentation being issued at the end of November 2021. The second tender process closed in January 2022.
- 7.6. The tenderers were asked to respond to a 50% quality and 50% price assessment and returned tenders were received on 20 January 2022.
- 7.7. Construction costs and other commercial matters were evaluated independently by the EA/QS to ascertain whether the returned tenders were in line with pre-tender estimates and pricing levels on the construction market.
- 7.8. The tender level submitted by the recommended Contractor is considered by the EA/QS to be consistent with competitive pricing levels currently found in the construction market.
- 7.9. The recommended Contractor has tabled a 92week programme, from the date of site possession to completion, which includes a 24week lead-in period (in order to complete their pre-construction works) and a 68week on-site build period.
- 7.10. The quality assessment was conducted via a pre-agreed list of questions that were included as part of the Qualitative Delivery Proposals. Each question was offered a score between 0 (question not answered) and 5 (excellent) together with a weighted score. The quality assessment was reviewed by the Procurement Team to ensure that a sufficient level of quality was demonstrated. Of a maximum weighted score of 100, the recommended Contractor scored 76 for their qualitative assessment.
- 7.11. The outcome of the quality tender review is shown below

Quality Proposal
Question 1 Understanding of the Contract Requirements and

Employer's Requirements = 4/5
Question 2 Method Statement = 4/5
Question 3 Programme = 4/5
Question 4 Supply Chain Management = 4/5
Question 5 Key Personnel and Overall Team Structure = 4/5
Question 6 Quality Assurance = 3/5
Question 7 Health and Safety = 3/5
Question 8 Employment and Skills = 4/5
Question 9 Added Value = 4/5

- 7.12. Taking into account both the quality and price tender returns the tender responses can be ranked as below. Further detail of the returned tenders is contained at Appendix 3.

<b>Supplier reference</b>	<b>Score</b>
Bidder 1	88%
Bidder 2	79.6%
Bidder 3	68.3%

- 7.13. The intention is to award a building contract on the terms and conditions as set out in the JCT standard Design and Build Contract (including the Council's standard building contract amendments). The EA is proposing the inclusion of a number of provisional sums (listed in Appendix 3) in the contract sum and the final cost of the provisional sums will only be agreed during the contract period thus presenting an area of cost risk. It is the case these provisional sums cannot, at this stage, be firmed up although the allowances contained at Appendix 3 have been reviewed and are deemed adequate.
- 7.14. The recommended Contractor has highlighted three elements which may be accepted by the Council for cost savings. These proposals will need to be considered by the Council at a later date once technical proposals have been prepared and fully costed. At present the recommended Contractor is proposing savings in the order of £235,000.
- 7.15. The recommended Contractor's tender remains open for a period of 16 weeks from 20 January 2022.
- 7.16. The ability of the recommended Contractor to take possession of the site is dependent on the completion of the demolition works currently being undertaken (as a condition of the site purchase agreement). These works have been instructed by Workspace under a separate contract. The progress of the demolition Contractor is being closely monitored by the Project Team and the Council's Employer's Agent, who is liaising closely with Workspace. Demolition works are expected to be completed by June 2022.

## **8. Updated scheme-to-completion costs**

- 8.1. The scheme-to-completion costs has been updated to reflect received tenders for the demolition works (instructed by Workspace) and the new build



construction works. The updated scheme-to-completion costs is contained at Appendix 3.

## **9. Appropriation of land**

- 9.1. This report seeks approval to appropriate the Chocolate Factory site (outlined in the plan attached at Appendix 2) for planning purposes pursuant to Section 122 of the Local Government Act 1972 as they are no longer required for the purposes for which they are currently held. The site is no longer required to be used as a car park and the buildings on the site are currently vacant.
- 9.2. The appropriation of the land and the subsequent development will enable the Council to take its first steps to contribute to the regeneration of the Wood Green Cultural Quarter. In addition, as part of the development, there will be a strong focus on landscaping and public realm to help promote the increased use of the outside space, support the health and well-being of the future residents and improve the biodiversity of species in the local vicinity.
- 9.3. 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 Chocolate Factory Phase 1 development. The types of rights that can be overridden by Section 203 of the HPA 2016 are any easements, liberty, privilege, right or advantage annexed to land and adversely affecting other land. An easement is a right of light, or right of way or interest in land which entitles a neighbouring landowner to enjoy such rights over the adjoining site. Any development which interferes with that right may entitle the owner of that right to seek an injunction preventing the development going ahead or damages for the effect on value of the right lost because of the interference. The Council recognises the potential rights of third parties and will pay compensation where a legal basis for such payments is established.
- 9.4. The report on title for the Chocolate Factory Phase 1 site reveals no onerous third-party interests that may impact the development. If any do exist of which we are not already aware, the Council's exercise of its powers under Section 203 of the HPA 2016 will mean the owners of those rights will not be able to stop the development by means of an injunction. Instead, where a legal basis is established, compensation will be paid in line with paragraph above.
- 9.5. It is not believed that any potential infringement of the third-party rights over the Chocolate Factory site are a breach of human rights, being rights to private and family life. The engagement that took place as part of the formal planning consultation process did not raise any concerns that there were possible infringements of third-party rights, including rights of light. Furthermore, if an injunction is sought by a third party for breach of a right, then if successfully claimed, the right will be converted into a right of compensation for loss of that right.
- 9.6. Based on the feedback from the planning consultation process, and bearing in mind Workspace have relinquished their Rights of Light over any future development on the site, there have not been any claims that any third-party rights would be infringed by the development. The likelihood of Rights of Claims from

other surrounding sites is low, given that aside from the adjacent workspace land, the Chocolate Factory site is surrounded by railway land, highway, low level warehousing and industrial buildings and land in the Council's ownership.

- 9.7. 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 over the Chocolate Factory site. Based on these circumstances, it is unlikely that there will be any claims, and whilst the level of potential compensation is unquantifiable until such a claim is made, it is not likely to be so significant as to impact on the scheme's viability.
- 9.8. In the unlikely circumstance that any claims are made and proven to have a legal basis, this report seeks approval to delegate 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 in line with the existing scheme of delegation.
- 9.9. This report seeks approval for the appropriation of the land at the Chocolate Factory site (edged red in the plans attached at Appendix 1) from planning purposes to housing purposes under Section 19 of the Housing Act 1985, after practical completion of the development on or around 29<sup>th</sup> February 2024. This will recognise the site's new use as the location of 80 newly built social rented Council homes, alongside new affordable workspace, and allow them to be let as such.
- 9.10. Finally, this report seeks approval for the appropriation of the land at the Chocolate Factory site (edged red in the plan attached at Appendix 1) from the General Fund to the HRA (at practical completion of the construction works) at the value of £500,000.00; representing the apportioned purchase and associated acquisition costs of the Chocolate factory site.

## **10. Risk**

- 10.1. Delaying the signature of the building contract beyond March '22 would put into jeopardy the current round of GLA grant funding earmarked for the development. If this was to occur, the development would stall in its contribution to the Council's aspirations of starting on site by March 2022 to deliver 1000 new council homes for Social Rent.
- 10.2. Furthermore, should the above happen it is unlikely that the project would be able to secure GLA grant funding via the 2021- 26 Affordable Homes Programme.
- 10.3. The recommended Contractor's tender is open for a period 16 weeks (from 20 January '22). Should the Council not approve the appointment of the recommended Contractor (by no later than the March Cabinet) the likelihood would be the need to re-tender the works, as there are no further Cabinet meetings planned during the remaining time that the tender price remains open,

due to the start of the pre-election period. In turn, it is probable that future tender prices would be higher because of the ongoing cost inflationary conditions within the construction sector at present.

- 10.4. Were the Council not to progress with the appointment of a Contractor for this project, a number of pre-commencement conditions and S106 obligations will not be cleared hampering the efforts of the Council and Workspace to progress the development plans and provide much needed homes and employment space in the Borough.

## **11. Contribution towards Strategic Outcomes**

- 11.1. 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”*.
- 11.2. 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.

## **12. Statutory Officers comments (Director of Finance (procurement), Head of Legal and Governance, Equalities)**

### **12.1 Legal**

#### **12.1.1 Appropriation for Planning Purposes**

- 12.1.2 The Council holds the site in the General Fund and it was subject to long leases which have been acquired and will be merged with the Council’s freehold title. The Council will be carrying out a redevelopment on the site which may affect third party rights. In order to override any third-party rights affecting the site the Council will need to engage s203 of HPA 2016 and prevent an injunction being sought. To do this the Council will need to appropriate the site for planning purposes first.
- 12.1.3 The Council may appropriate land from general fund purposes to planning purposes under Section 122 of the Local Government Act 1972. 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.
- 12.1.4 The requirements (of Section 122 LGA 1972) are that:
- a) the site is Council owned land;
  - b) the site is no longer required for its present purpose (general fund); and
  - c) The Council is seeking to appropriate the land for the statutory purposes

of planning.

12.1.5 The site does not contain any open space.

12.1.6 Section 203 of the Housing and Planning Act 2016

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

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

12.1.9 Appropriation for Housing Purposes

12.1.10 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.

12.1.11 The recommended Contractor referred to in the recommendations and identified in Appendix 3 has been procured through the Westworks Development and Construction Dynamic Purchasing System in compliance with the Public Contracts Regulations 2015.

12.1.12 Pursuant to Contract Standing Order 9.07.1(d) Cabinet has authority to approve the award of contract referred to in the recommendations.

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

## **12.2 Procurement**

12.2.1 Strategic Procurement (SP) note that this report relates to the Approval of construction contract and land appropriation at Chocolate Factory Phase 1.

- 12.2.2 SP support the recommendations in this report in accordance with Contract Standing Order clause 7.01 (b)
- 12.2.3 Pursuant to CSO 7.01 (b) and Regulation 33 of the Public Contract Regulations 2015, SP confirms that tenders were invited to tender through the Westworks Development and Construction Dynamic Purchasing System.
- 12.2.4 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. The recommended Contractor has scored the overall highest as set out in the Exempt part of this report.
- 12.2.5 SP support the recommendations within this report and have no objections with awarding this Contract to the recommended Contractor for the value outlined in the Exempt part of the report.

### **12.3 Finance**

- 12.3.1 The chocolate factory scheme will deliver 80 new social rent homes and a 356m2 affordable workspace.
- 12.3.2 The preferred contractor was selected from three competitive tenders made via the construction DPS route.
- 12.3.3 The scheme is in the current HRA financial plan and MTFS, and the estimated total cost can be met within the HRA.
- 12.3.4 The appropriation of land from GF to HRA represents a debt transfer, rather than a cash transfer.
- 12.3.5 The land value for the appropriation (£0.5m) is an apportioned cost of acquiring the entire site known as Chocolate factory & Mallard Place. This apportionment was based on the size of the plot on which this phase one scheme will be delivered.
- 12.3.6 The appropriation works by reducing the historical General Fund debt position by £0.5m and increasing the historical HRA debt position by £0.5m.
- 12.3.7 The HRA financial Plan includes this amount as part of the overall cost of this scheme to be funded through the HRA new build capital programme budget.
- 12.3.8 Further finance comments are contained in Appendix 3 – Exempt Report.

### **12.4 Equality**

- 12.4.1 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.

- 12.4.2 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 apply to the first part of the duty.
- 12.4.3 The proposed decision is to approve the appointment of a contractor and appropriate land in order to build 80 new homes and 356 m<sup>2</sup> of affordable workspace at the Chocolate Factory site in Wood Green. The decision will increase the supply of Council rented homes which are genuinely affordable to the borough's residents, including a number of homes specifically designed for letting to tenants requiring wheelchair access. 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 Homelessness Strategy. As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.
- 12.4.4 With regards to the appointment of a contractor, it is noted that 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 project does not result in any preventable or disproportionate inequality. With regard to the proposed land appropriation, it is noted that no third-party breaches are foreseen.
- 12.4.5 The development of the Chocolate Factory site can be expected to provide training and employment opportunities to local residents. The S106 agreement associated with 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. In this context, it is notable that residents of the Wood Green area, including Noel Park, Woodside, and Bounds Green wards, are younger on average and more likely to be from BAME communities than the populations of Haringey or London. People with these protected characteristics can therefore be expected to benefit from the proposed decision, and as such it represents a measure to advance equality of opportunity for these groups.
- 12.4.6 There may be some potential negative impacts of the development of the Chocolate Factory site, principally relating to very minor changes to local pedestrian routes during demolition and construction and the potential for air and noise pollution generated by the development. However, these will be mitigated and managed by the requirement for air quality and noise monitoring, and local

traffic management planning as part of the Construction Management Plan required as a condition of the planning approval.

- 12.4.7 The Council and Workspace have already established a local community liaison group, with the first meeting taking place in December 2021. This group includes a number of local residents and representatives from local businesses, and the Council have issued invitations to local schools and education providers, business groups and residents association. Local resident representatives were selected partly to reflect the demographic profile of the local area, and meetings will take place online, with minutes published on the Council's website afterwards, to be as accessible as possible.

### **13. Appendices**

Appendix 1 – Red line boundary of Chocolate Factory Phase 1 site

Appendix 2 – Red line boundary showing the full area of the wider Chocolate Factory site acquired from Workspace and benefitting from planning permission ref: HGY/2017/3020 (as amended by an approved s96a application ref: HGY/2021/0624)

Appendix 3 – Exempt – financial information

### **14. Local Government (Access to Information) Act 1985**

Appendix 3 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).