

**Report for:** Cabinet – 19 July 2022

**Title:** Approval of Construction Contract for Council Homes on Land at Watts Close, Seven Sisters

**Report**

**Authorised by:** David Joyce, Director of Council House-Building, Placemaking, and Development

**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 on Council land at Watts Close, Tottenham N15 5DW, eighteen new Council homes for Council rent consisting of four one-bedroom flats, eight two-bedroom flats, four three-bedroom houses and two four-bedroom houses with two of the flats being fully accessible for wheelchair-users ("the Watts Close development").
- 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 which will permit the Council to utilise the statutory powers to override easements and any other third party rights and interest, to allow the development to proceed in accordance with the planning permission.
- 1.3. Following on from a formal procurement exercise, Cabinet is asked to approve the appointment of Formation Design & Build Limited to deliver these new Council homes on vacant land.

**2. Cabinet Member Introduction**

- 2.1. I'm very pleased to recommend that Cabinet should approve the construction contract for another eighteen new Council homes for letting at Council rent. Six of these homes will have three or four bedrooms, providing much needed homes for families. Two homes will be fully accessible for wheelchair-users, with two on-site car parking spaces provided.
- 2.2. The design of these homes have been developed to meet the Council's aspirations to meet net zero carbon, through the use of carefully selected sustainability measures.

- 2.3. The scheme will bring improvements to the surrounding area by providing amenity and play space, as well as cycle storage.
- 2.4. Most importantly, Council tenants will have priority for these new homes

### **3. Recommendation**

#### **3.1. Cabinet is recommended:**

- 3.1.1. To approve the appointment of Formation Design & Build Limited to undertake building works to provide a total of eighteen Council rented homes at Watts Close for a total contract sum and to approve the client contingency sum, both of which are set out in the exempt part of the report.
- 3.1.2. To approve the appropriation of the land at Watts Close 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 6.4 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 third party rights which may be affected by the Watts Close development, under planning permission Ref: HGY/2022/0035.
- 3.1.4. To delegate to the Director of Placemaking and Housing, after consultation with the Director of Finance and the Cabinet Member for Council Housing-Building, Placemaking, and Development, authority to make payments of compensation as a result of any genuine claims of third party rights affected by the Watts Close development and payable as a result of recommendation 3.1.3, within the existing scheme of delegation.
- 3.1.5. To approve the appropriation of the land at Watts Close (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 schedule in December 2023.
- 3.1.6. To delegate powers to the Director of Placemaking and Housing and the S151 Officer (Director of Finance) to approve overspend beyond the contingency of up to 5% of the construction contract value and approve necessary associated contract variations. To note the project on costs and total scheme cost set out in the exempt report (Appendix 2).

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

- 4.1. On 29 September 2019 Cabinet included the land at Watts Close 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 Contract 2016 with amendments. An alternative option would have been to do a direct appointment; however this option was not suitable 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**

### **Watts Close development site**

- 6.1. Watts Close is a cul-de-sac situated off Seaford Road, which is located within the Seven Sisters Ward (formally Tottenham Green Ward). The site comprises of eleven single storey bungalows, which are currently used for temporary housing. The site also consists of a car park and an underutilised community centre on Lomond Close. North of the site is a 3-storey row of flats, with terraced homes bordering west of the development.
- 6.2. This land is owned by the Council and held in the HRA.
- 6.3. On 29 September 2019, Cabinet approved the inclusion of the Watts Close 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 four one-bedroom flats, eight two-

bedroom flats, four three-bedroom houses and two four-bedroom houses with two of the flats being fully accessible for wheelchair-users.

### **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 Council's community engagement consultation period commenced on 19<sup>th</sup> July 2021 and ran until 8<sup>th</sup> August 2021. The Council consulted two hundred and eighty-four households (284). This was the number of households the engagement letter was sent too. It should be noted that residents outside of the letter drop were also able to comment. Seventy-seven responses were received in total. The highest number of comments, forty-four, were received via the online Teams live event.
- 6.7. The Housing Engagement Team held two engagement events for residents on 19<sup>th</sup> July 2021 (15:00hrs) and 3<sup>rd</sup> August 2021 (18:00hrs).
- 6.8. 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.
- 6.9. The scheme was submitted to planning on the 7<sup>th</sup> January 2022 and residents were formally consulted as part of this process. Planning committee approval of the scheme was granted on the 7<sup>th</sup> March 2022.

### **The Build Contract**

- 6.10. This report is seeking final approval of the construction contract in order to enable the new build works to commence.
- 6.11. The Watts Close scheme has been designed up to stage 3 (+) of the Royal Institute of British Architects Plan of Works 2020. 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 sixteen months.
- 6.12. A competitive tender was conducted via the Westworks DPS. A competitive tender is considered the preferred route for the appointment of a principal contractor.
- 6.13. Contractors were asked to respond to a 60% quality 40% price assessment. They responded with their proposal on 9 May 2022. 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.
- 6.14. Costs were evaluated independently by the Project Team's Employers Agent/Quantity Surveyor to ensure value for money in line with current market trends.

- 6.15. 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.
- 6.16. The tender assumes signing of the contract and site possession in August 2022, as the tender offer remains open for twelve weeks from the return date.

### **Appropriation of Land**

- 6.17. This report seeks approval to appropriate the Watts Close 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.
- 6.18. The site is currently held for temporary accommodation housing purposes and due to its poor connection and integration with the surrounding streets, has anti-social behaviour issues.
- 6.19. The appropriation of the land and the subsequent development will enable the Council to provide truly sustainable new homes that aspire to meet net zero carbon as far as possible and will also create well designed accommodation which will foster a sense of community and discouraging antisocial behaviour.
- 6.20. 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 Watts Close 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.
- 6.21. 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.
- 6.22. There is no reason to believe that any such rights will be significantly infringed by this development.
- 6.23. 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.

### **6.24. Procurement Process**

- 6.25. The contract was tendered via the Westworks Development and Construction DPS on 18 March 2022.
- 6.26. Four tender submissions were received by the tender deadline date on 9 May 2022.
- 6.27. Tender submissions were checked for compliance and completeness by the Strategic Procurement team on 9<sup>th</sup> May 2022. All were found to be compliant and complete and were taken forward to evaluation.
- 6.28. The tenders were evaluated for Quality and Price as set out in the ITT document.
- 6.29. 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.
- 6.30. The information below summarise the overall tender scores achieved by each Bidder in line with the tender evaluation criteria of 60% Quality and 40% Price as set out in the Invitation to Tender document.

Supplier	Quality Score (60%)	Price Score (40%)	Total Score (100%)
Formation Design & Build Limited	49.2%	40%	89.2%
Bidder B	39.6%	37%	76.6%
Bidder C	39.6%	32%	71.6%
Bidder D	31.2%	32%	63.2%

## 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”*.

## 8. Legal

- 8.1. The Head of Legal and Governance (Monitoring Officer) has been consulted in the preparation of the report.
- 8.2. Section 122 LGA 1972 provides that:  
*“The Council may appropriate for any purpose for which the Council is authorised by statute to acquire land by agreement any land which belongs to it and is longer required for the purpose for which it is held immediately before the appropriation”*.



Section 122 LGA 1972 provides that the Council may not appropriate land constituting or forming part of an 'open space' or land forming part of a common (unless it is common or fuel or field garden allotment of less than 250 square yards unless they with advertising their intention to do so under the section.

The requirements of Section 122 LGA 1972 set out above are satisfied in respect of the site at Watts Close and can therefore be appropriated as:

- (a) the site is Council owned land;
- (b) the site is no longer required for housing purposes; and
- (c) the Council is seeking to appropriate the land for the statutory purpose of planning.

The site does not contain open space.

8.3. Section 203 states a person may carry out building or maintenance work even it involves (a) interfering with a relevant right or interest (b) breaching a restriction as to use of land. This applies to building work where: -

- a) there is planning consent,
- b) the work is on land for the purpose for which the land was vested, acquired or appropriated for planning purposes under section s.246(1) of the Town and Country Act 1990;
- c) the authority could acquire the land compulsorily for the purpose of the building work.

8.4. The requirements of Section 203 will be satisfied as,

- a) planning permission has been granted for the development;
- b) the land will be appropriated for planning purposes under the Section 122 of the LGA 1972; and
- c) the Council could acquire the land compulsorily for the purposes of the building work. Section 226(1) of the Town and Country Planning Act 1990 contains the compulsory purchase powers of the Council which 'the authority think that the acquisition 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.

8.5. As set out in this report compensation will be payable to those whose genuine claims to rights are infringed by the development and overridden under section 203.

8.6. The Council will be seeking to appropriate the site at Watts Close following practical completion, timetabled for August 2022 of the development back for housing purposes into the HRA. The Council can under Section 19 (1) of the Housing Act 1985 appropriate for housing purposes any land for the time being vested in them and at their disposal. This appropriation is necessary as the new build units will be used for social housing by the Council and therefore must be held in the HRA.

8.7. The use of a Dynamic Purchasing System (DPS) is compliant with the Public Contracts Regulations 2015 (Reg 34) and also with the Council's Contract Standing Orders (CSO 9.04). The Head of Legal and Governance (Monitoring Officer) has been advised that the procurement has been conducted in accordance with the

procedure set out in the Westworks Development and Construction DPS.

8.8. The award of the contract will be a Key Decision and, as such, needs to comply with the Council's governance processes in respect of Key Decisions including publication in the Forward Plan.

8.9. The Cabinet has power under CSO 9.07.1 (d) (contracts valued at £500,000 or more) to approve the award of contract.

## **9. Procurement**

9.1. Strategic Procurement (SP) note that this report relates to the approval of construction contract and land appropriation at Watts Close, N15 5DW.

9.2. SP support the recommendations in this report in accordance with Contract Standing Order clause 7.01 (b).

9.3. Pursuant to CSO 9.04.1 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 four compliant tenders. The tenders were reviewed and evaluated independently by a quality panel and the pricing was assessed separately by the Employers Agent. Formation Design & Build Limited 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 Formation Design & Build Limited for the value outlined in the Exempt part of the report.

## **10. Finance**

10.1. The scheme will deliver eighteen units of social rented homes on completion at a total construction contract value outlined in the Exempt part of the report.

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

10.3. Further finance comments are contained in the exempt report.

10.4. This scheme is part of the Council's Housing Delivery Programme, and the costs can be contained within the HRA business plan.

## **11. Management Plan**

11.1. Watts Close is a small development of only eighteen homes, two of which are family houses, therefore the issues of lengthy voids experienced at Rosa Luxemburg should not apply.

11.2. To mitigate the risk of lengthy voids, a protocol has been developed to ensure that



valuations required for rent setting are obtained at least 6 months ahead of practical completion to ensure that homes can be offered earlier in the development cycle. This will enable tenancies to be activated as soon as the new buildings have been handed over. The Neighbourhood Moves Scheme will apply to the Watts Close development.

- 11.3. The Housing Assets Team (formerly HfH) have created a team dedicated to ensuring that all pre handover tenancy issues are dealt with ahead of practical completion. Regular meetings are now being held with that team to ensure that all new developments can be scheduled and resourced, particularly in Lettings and Allocations; and NTLO services can be put in place on a development specific basis.
- 11.4. Watts Close has been designed with all Designing out Crime recommendations incorporated into the Scheme, these are intended to minimise and hopefully eradicate areas of Anti-Social Behaviour.
- 11.5. The Development is not large enough to warrant a fulltime concierge however Housing Assets will be providing ongoing locally based support which they will be able to do from the newly established base at Walter Tull House, located in Tottenham Hale.

## **12. Equality**

- 12.1. 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.
- 12.2. 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.
- 12.3. The proposed decision relates to new build works to provide eighteen new Council rented homes at Watts Close, N15 5DW: this includes the appointment of a contractor, the appropriation of land at Watts Close, and approval of plans to override easements and other rights of neighbouring properties.
- 12.4. 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 two of the eighteen 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.

- 12.5. As an organisation carrying out a public function on behalf of a public body, the Contractor, Formation Design & Build Limited, 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.

### **13. Use of appendices**

Appendix 1 – Site Line Boundaries.

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

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

- 14.1. 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).