

Report for: Cabinet Member Signing – 7 December 2022

Title: Partridge Way Garages, N22 – Award of Construction Contract

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

Lead Officer: Robbie Erbmann, Assistant Director for Housing

Ward(s) affected: Bounds Green

Report for Key/ Non Key Decision: Key Decision

1. Describe the issue under consideration

- 1.1 This report seeks approval from the Cabinet Member for Council Housebuilding, Placemaking, and Development to appoint the recommended contractor to complete a new build development of 23 new Council homes comprising 14 x one-bed two-person flats, 7 x two-bed four-person flats, 1 x two-bed three-person wheelchair flat, 1 x two-bed four-person wheelchair flat on Council land at Partridge Way edged red on the Development Plan attached at Appendix 1 being the 'Partridge Way development site'. All 23 new council homes will be let at London Affordable Rents, pending Cabinet approval of the Provisional MTFS Budget on the 6th December 2022.
- 1.2 The Cabinet Member for Council Housebuilding, Placemaking and Development is asked to approve the appropriation of the land edged red on the Development Plan at Appendix 1 from housing for planning purposes to facilitate the development process which will also allow the Council to utilise its powers to override any third party interests and rights (subject to engagement with any potential claimants) and then to appropriate the land back to housing following practical completion of the development.

2. Cabinet Member Introduction

- 2.1. Not applicable.

3. Recommendations

- 3.1. The Cabinet Member for Council Housebuilding, Placemaking, and Development is recommended:
 - 3.1.1 To approve the appointment of Contractor A, identified in the exempt part of the report, to undertake the new build works to provide a total of 23 new Council homes let at London Affordable Rents (pending Cabinet approval of the Provisional MTFS Budget on 6 December 2022) at Partridge Way for a total contract sum set out in the exempt part of the report; and to approve the client contingency sum set out in the exempt part of the report.
 - 3.1.2 To approve the appropriation of the Partridge Way development site edged red

on the plan titled 'Development 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 the development as set out in part 6 of this 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 and interests infringed upon by the Partridge Way development, under planning permission Ref: HGY/2021/2075.
- 3.1.4 To delegate to the Director of Housing, Regeneration and Planning, after consultation with the Director of Finance and the Cabinet Member for Placemaking and Housing, authority to make payments of compensation as a result of genuine claims of third party rights affected by the Partridge Way development and payable as a result of the recommendation 3.1.3, within the existing scheme of delegation.
- 3.1.5 To approve the appropriation of Partridge Way development site edged red in the plan titled 'Development 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.
- 3.1.6 To approve the total scheme cost set out in the exempt part of the report.
- 3.1.7 To approve the issuance of a letter of intent for up to 10% of the contract value as set out in the exempt part of the report.
- 3.1.8 To consider the engagement and consultation carried out on this proposed scheme set out at clauses 6.6 to 6.9 of this report.

4. Reasons for decisions

- 4.1. The site known as Partridge Way was approved by Cabinet in July 2019 to be included in the Council's Housing Delivery programme. The scheme has subsequently been granted planning consent and is ready to progress to construction. This report therefore marks the third, and final, Members' decision to develop on this site.
- 4.2. Contractor A has been identified by a formal tender process to undertake these works.
- 4.3. There are no reasons for the Council to believe that any third-party rights would be infringed by the development: the scheme has received planning permission, and no concerns about the loss of rights were raised during extensive local engagement and consultation with residents. However, appropriation of the Partridge Way development site for planning purposes is recommended as a precaution. It will allow the Council to use the powers contained in Section 203 to override easements and other rights of neighbouring properties and will prevent injunctions that could delay or prevent the Council's proposed development. Section 203 converts the right to seek an injunction into a right to compensation. The site will need to be appropriated back from planning purposes to housing purposes on completion of the development to enable the Council to use the land for housing and let 23 new Council homes.

4.4. The site proposal will provide 23 much needed Council homes on Council land. Additional works will include enhancing both the existing estate open space and landscaping along Bounds Green Road on adjoining land lying north east of the Partridge Way development and shown within the site edged red on the 'Site layout' plan at Appendix 1. The proposals alleviate potential anti-social behaviour attracted to the site by an open, unsecured car park, improving a prominent estate boundary on Bounds Green Road.

5. Alternative options considered

5.1. It would be possible not to develop this site for housing purposes. However, this option was rejected as it does not support the Council's commitment to deliver a new generation of Council homes, and would leave an underused car park site continuing to be vulnerable to anti-social behaviour and ongoing management issues.

5.2. This opportunity was procured via a competitive tender through the Westworks Procurement Ltd Development and Construction Dynamic Purchasing System, using JCT Design & Build Contract 2016 with amendments, the route recommended by Strategic Procurement for a contract of this value. Alternative options would have been either a competitive tender through the London Construction Programme (LCP) Major Works 2019 Framework Agreement or a direct appointment to one of the LCP framework providers. These options were both rejected: the first because an Expression of Interest exercise through the LCP was unsuccessful, and the second because of the quality and price safeguarding a competitive tender provides.

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 the scheme proceeded through the feasibility and design stages and any comments or objections raised were taken into consideration by Planning Committee in reaching its decision.

5.4. The Council could decide not to appropriate the land for housing purposes upon practical completion of the building works. This option was rejected because it could prevent the Council from being able to offer up these homes for occupation, thereby not supporting the delivery of much needed affordable homes.

6. Background information

Partridge Way development site

6.1. As shown in the 'Site layout' plan in Appendix 1, the Partridge Way development site is located at the junction between Trinity Road and Partridge Way which creates an angular area of land previously occupied by a row of garages. There is also an

adjoining underused open space that sits at the junction of Trinity Road and Partridge Way which is mainly used as an alternative pedestrian access route through the estate. The Partridge Way development site for the proposed residential building is triangular in shape as shown on the Development Plan edged red however the wider site boundary shown on the Site Layout plan covers areas proposed for landscaping improvements.

- 6.2. There are two Conservation Areas surrounding the proposed site; the Bowes Park Conservation area to the north and north-east and the Trinity Garden Conservation Area to the east and south-east. The immediate local area is characterised by two 15 storey tower blocks, Finsbury and Newbury House and an adjacent row of two-storey brick houses with timber panelling to the front and rear. The wider local area is predominantly late Victorian terraces with red brick facades and white stucco detailing.
- 6.3. This land is Council-owned and held in the HRA.
- 6.4. In July 2019, Cabinet approved the inclusion of Partridge Way into the Council's Housing Delivery programme to determine its feasibility and capacity for the delivery of new homes and then, if appropriate, its progression through to planning consent.
- 6.5. Designs have been developed and approved that will deliver 23 homes at Partridge Way; 14 x one-bed two-person flats, 7 x two-bed four-person flats, 1 x two-bed three-person wheelchair flat, 1 x two-bed four-person wheelchair flat.

Engagement and Consultation

- 6.6. As a result of the Covid-19 pandemic, the scheme proposals were presented to the public virtually via Microsoft Teams and the Council's chosen virtual consultation platform, Commonplace.
- 6.7. The Council's community engagement period commenced on 9 November 2020 and ran until 29 November 2020. The Council invited comment on the development proposals from 241 households via letter drop. It should be noted that residents outside of the letter drop were also able to comment via the Commonplace website.
- 6.8. The Housing Engagement Team held two engagement events for residents via Microsoft Teams on Monday 23 November 2020 at 6pm (18:00hrs) and on Friday 27 November 2020 at 1pm (13:00hrs).
- 6.9. The planning application for the scheme was submitted on 9 July 2021 and local residents were again formally consulted as part of the planning process. Planning Committee formally granted approval on 21 March 2022.
- 6.10. There is no evidence to indicate that any third-party rights would be infringed by the Partridge Way development: the scheme has received planning permission, and no concerns about the loss of rights were raised during extensive local engagement and consultation with residents.

The Build Contract

- 6.11. This report is seeking approval for the award of the construction contract to enable the new build works to commence.
- 6.12. The housing scheme at Partridge Way has been designed up to stage 3+ of the Royal Institute of British Architects (RIBA) Plan of Works 2019. Since planning approval has been granted, a contractor is now needed to develop and finalise the technical design and complete the new build works. It is currently anticipated that the contract period will be 16 months a per Contractor A's proposed programme, submitted as part of their tender.
- 6.13. The project tender process involved first conducting an 'expression of interest' exercise via the LCP in March 2022, which was unsuccessful. Following this, a tender was released via the Westworks Procurement Ltd Development and Construction Dynamic Purchasing System in April 2022.
- 6.14. In total four suppliers opted into the tender opportunity and all four responded.
- 6.15. Bidders were asked to respond to a 50% price, 50% quality assessment. Details of works cost received from all bidders has been provided in Appendix 2, which is exempt from publication due to the commercially sensitive nature of this information.
- 6.16. The quality assessment was conducted by Haringey's project team, with the moderation led by the Council's Procurement Team to ensure a high level of quality across both the submissions and scoring. The quality assessment was conducted via a pre-agreed list of questions that were included as part of the delivery proposals in the tender. Each question was scored between 0 (question not answered) and 5 (excellent) and then weighted as set out in the tender.
- 6.17. The project team's Cost Consultant was assigned to independently evaluate the cost to ensure value for money in line with current market trends.
- 6.18. Contractor A's contract sum is in the exempt part of the report. Considering the size, scope, complexity, and abnormalities specific to this project, the project Cost Consultant has concluded that the tender submitted by the recommended contractor has provided a high level of understanding of the scheme and offers reasonable value for money in the current market. The detailed outcome of the quality and cost tender scoring has been provided in Appendix 2.
- 6.19. The recommendation is therefore to award the contract to Contractor A, as set out in the exempt part of the report, Appendix 2.
- 6.20. The contract is to be awarded on a fixed price basis. It is to include new build works, the associated wider landscaping works, site establishments, design works, site enabling, management costs, overheads and profits and there is a defects liability period of 12 months.
- 6.21. The tender assumes signing of the contract and site possession by November 2022, to allow start on site in February 2023 with completion expected in June 2024.

Appropriation of land

- 6.22. The Partridge Way development site edged red on the plan titled 'Development Plan' attached at Appendix 1, is currently held for housing purposes. The site sits at the junction of Trinity Road and Partridge Way and comprises garages (which have now been demolished). In order to carry out the proposed Partridge Way development the land edged red on the plan titled 'Development Plan' at Appendix 1 must be appropriated for planning purposes pursuant to Section 122 of the Local Government Act 1972 as it is no longer required to be used as an under-utilised garage site. The open space is not part of the Partridge development site to be appropriated, but will be enhanced as part of additional works to complement the development.
- 6.23. The appropriation of the land and the subsequent development will enable the Council to secure the plot boundary and will enable the Council to improve the landscaping and security of the neighbouring estate. The appropriation of the land and the subsequent development will enable the Council to develop much needed housing in the London Borough of Haringey.
- 6.24. By appropriating the site for planning purposes allows the Council to use its powers under Section 203 of the Housing and Planning Act 2016 ("HPA 2016") to override easements and other third party rights and interests infringed upon by the Partridge Way development. This may include a right to light or right of way or interest in land which entitles a neighbouring landowner to enjoy such rights over the development site. Any interference with such right may entitle the owner of that right to seek an injunction preventing the development from going ahead or seek damages for the value of the right lost because of the interference. The Council recognises the potential rights of such third parties and will pay compensation where a legal basis for such payments is established.
- 6.25. It is not believed that the potential infringement of any third-party rights is a breach of human rights, being rights to private and family life. S203 will prevent an injunction being sought by a third party for breach of a right, the right will instead be converted into a right of compensation under section 204 of the HPA 2016.
- 6.26. Following the public consultation event, there has not been any evidence of potential claims that any third-party rights would be infringed by the developments 6.6 to 6.10.
- 6.27. 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 or third party claims or rights in relation to the site. Furthermore, no neighbouring properties have come forward asserting any breach of easements or third party rights or interests. Based on these circumstances, it is unlikely that there will be any claims, but the level of compensation is unquantifiable until such a claim is made so the risk of paying compensation is low and therefore it is not likely to be so significant as to impact on the scheme's viability.

Unregistered Land

- 6.28 The Partridge Way development site comprises unregistered land lying at the north of the site which is in the process of being registered with the Land Registry. The

unregistered land was previously former highways before it was stopped up, and subsequently redeveloped as part of the Council's housing estate. It is understood there are no obstacles to registering the land in the Council's name based on adverse possession (as there is an absence of evidence of title ownership to the unregistered land). Adverse possession is the process by which a person who is not the legal owner of land can become the legal owner by possessing the land, in the requisite manner, for the requisite period of time. The Council has been in factual possession of the unregistered land as it forms part of the Council's housing estate and has always presumed ownership of the unregistered land since the site was transferred to the Council for housing purposes since the Council's formation under the London Government Act 1963.

7. Contribution to Strategic Outcomes

- 7.1. The recommendations in this report will support the delivery of the Housing Priority in the 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"*.

8. Statutory Officer Comments

8.1. Legal

Appropriation for Planning Purposes

8.1.1 The Council holds the site for housing purposes. In order to carry out the Partridge Way development under the planning permission, the development site will need to be appropriated from housing 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 any statute to acquire land by agreement any land which belongs to it and is no longer required for the purpose for which it is held immediately before the appropriation.

8.1.2 The requirements of Section 122 LGA 1972 are that:

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

8.1.3 The site does not contain open space.

Section 203 of the Housing and Planning Act 2016

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

8.1.5 Under Section 203 the Council may carry out the development even it involves (a) interfering with a relevant right or interest (b) breaching a restriction as to use of land. This applies to building work where: -

- a) there is planning consent;

- b) the work is on land appropriated for planning purposes (as defined under section s.246(1) of the Town and Country Act 1990);
- c) the authority could acquire the land compulsorily (under section 226(1) of the Town and Country Planning Act 1990) for the purpose of the building work.

8.1.6 The requirements of Section 203 will be satisfied as: -

- (a) planning permission has been granted for the development;
- (b) the Partridge Way development site 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 Partridge Way development will lead to an improvement in the economic, social or environmental wellbeing of the areas.

Appropriation for Housing Purposes

8.1.7 The Council will be seeking to appropriate the Partridge Way development 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.

Legal comments on contract and procurement process

8.1.8 The contract which this report relates to has been procured by a tender via the Westworks Ltd Development & Construction Dynamic Purchasing System. The use of a Dynamic Purchasing System is provided for under Regulation 34 of the Public Contracts Regulations 2015 (the Regulations). It is also provided for under the Council's Contract Standing Orders (CSO 9.04). Strategic Procurement has confirmed to the Head of Legal and Governance (Monitoring Officer) that the procurement has been conducted in accordance with the Regulations, the Council's CSOs and with the process set out in the Framework Agreement for award of call off contracts.

8.1.9 The award of the contract is 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.

8.1.10 A contract of this value would normally be approved by Cabinet in accordance with CSO9.07.1 (d) (contracts valued at £500,000 or more). However, in-between meetings of the Cabinet, the Leader may take any such decision or may allocate to the Cabinet Member with the relevant portfolio (CSO 16.02).

8.1.11 The Head of Legal and Governance (Monitoring Officer) sees no legal reasons preventing the Cabinet Member for Council Housebuilding, Placemaking and

Development from approving the recommendations in the report.

8.2. **Procurement**

8.2.1 Strategic Procurement (SP) note that this report relates to the approval of Housing Construction Contract and Land appropriation at Partridge Way N22.

8.2.2 SP notes the recommendations in this report which are in line with Contract Standing Order clause 7.0.1. (b).

8.2.3 Pursuant to CSO 9.04 and Regulation 34 of the Public Contracts Regulations 2015, SP confirms that tenderers were invited to Tender through the Westworks Procurement Ltd DPS.

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

8.2.5 SP note that tender returns were evaluated independently by a Quality Panel and the Price element of the Tender was evaluated separately. Contractor A scored the highest in quality and Price overall as set out in the Exempt part of this report.

8.2.6 SP notes the recommendations within this report and sees no reason not to award this Contract to Contractor A for the value outlined within the Exempt part of this report.

8.3. **Finance**

8.3.1 Finance notes that the scheme will deliver 23 council homes at a total contract sum set out in the exempt part of the report.

8.3.2 Finance further notes the recommendation to appoint Contractor A is reported by Strategic Procurement as in line with Contract Standing Order clause 7.01. (b) – paragraph 8.2.2 above.

8.3.3 The scheme is contained within the current Housing Revenue Account (HRA) financial and business plan.

8.3.4 The total scheme cost as stated in the exempt part of this report can be contained within the HRA.

8.3.4 Further Finance comments are contained in the exempt report.

8.4. **Equality**

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

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act.

- Advance equality of opportunity between people who share those protected characteristics and people who do not.
- Foster good relations between people who share those characteristics and people who do not.

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

8.4.3 The proposed decision relates to new build works to provide 23 new Council homes at Partridge Way N22. The decision will increase the supply of Council homes. This will have a positive impact on individuals on the housing register, which includes people in severe housing need and people currently living in temporary accommodation. Data held by the council suggests that women, young people, and BAME communities are over-represented among those living in temporary accommodation. As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

8.4.4 With regard to the land appropriation, it is noted that no third-party breaches are foreseen. With regards to the contract appointment, as an organisation carrying out a public function on behalf of a public body, the contractor will be obliged to have due regard for the need to achieve the three aims of the Public Sector Equality Duty as stated above.

9. Use of appendices

Appendix 1 – Partridge Way Red Line Boundary Plan CGI and Floor Plan

Appendix 2 – Exempt Financial Information

Appendix 3 – Exempt Tender Report

10. Local Government (Access to Information) Act 1985

10.1. Appendices 2 and 3 are 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).