

Report for: **Cabinet Member Signing**

Title: **Approval to deliver Council homes, let construction contract and appropriation of land at former Car Park, Kerswell Close, N15 5RP**

Report Authorised by: **David Joyce, Director of Placemaking and Housing**

Lead Officer: **Robbie Erbmman, Assistant Director Housing**

Report Prepared by: **Jack Goulde, Senior Housing Delivery Project Manager**

Ward(s) affected: **St. Ann's**

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 construct, on Council land at the former Car Park, Kerswell Close, N15 5RP, twenty five new Council homes for Council rent consisting of nine one-bedroom flats, twelve two-bedroom flats, three three-bedroom flats and one four-bedroom flat with one Ground Floor three -bedroom and one Ground Floor four – bedroom flat being fully accessible for wheelchair-users (“the Kerswell Close development”). In addition the development will have an Office Hub capable of use by the Adult Social Services Team to support vulnerable Tenants in the wider area. The new Homes will be let at London Affordable Rents.
- 1.2. In order to facilitate this, the Cabinet Member for Council Housebuilding, Placemaking, and Development 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, the Cabinet Member for Council Housebuilding, Placemaking, and Development is asked to approve the appointment of Bidder 1 to deliver these new Council homes on vacant land.

## **2. Recommendations**

The Cabinet Member for Council Housebuilding, Placemaking, and Development is recommended to:

- 2.1 Approve the award of a contract to Bidder 1 as stated in the attached Exempt Report to undertake building works to provide a total of twenty-five Council rented homes at Kerswell Close for a total contract sum and approves the client contingency sum both of which are set out in the exempt part of the report.

- 2.2 Approve the appropriation of the land at Kerswell Close highlighted in the red line boundary plan attached at Appendix 1 from car parking 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 this report.
- 2.3 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 Kerswell Close development, under planning permission Ref: HGY/2022/2250.
- 2.4 Delegate to the Director of Placemaking and Housing, after consultation with the Director of Finance and the Cabinet Member for Council Housebuilding, Placemaking, and Development, authority to make payments of compensation as a result of any genuine claims of third party rights affected by the Kerswell Close development and payable as a result of recommendation 2.2, within the existing scheme of delegation.
- 2.5 Approve the appropriation of the land at Kerswell 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.
- 2.6 This recommendation is included in exempt appendix 2.

### **3. Reasons for decisions**

- 3.1. On 11<sup>th</sup> December 2018 Cabinet included the land at Kerswell Close into the Council's housing delivery programme. This scheme has subsequently been granted planning consent and is ready to progress to construction.
- 3.2. There are no reasons for the Council to believe that any third-party rights would be infringed by the development: Planning Permission was granted on 29<sup>th</sup> November 2022, and no applicable concerns about the loss of rights were raised during extensive local engagement and consultation, including a Section 105 consultation in May 2021 with residents. However, appropriation of the Kerswell Close 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 25 new Council homes.
- 3.3. The site proposal will provide 25 much needed Council homes on Council land, including three, 3-bed, five-person family homes (one of which is at M4(3) standard) and one 4 Bed family home to M4(3) standard, which are in particularly high demand. Additional works proposed include extensive enhancements to the landscaping in the adjoining Kerswell Close estate, with much needed security

measures including CCTV and lighting to prevent crime and anti-social behaviour.

- 3.4 Following a formal procurement process, a contractor has been identified to undertake these works.

#### **4. Alternative options considered**

- 4.1 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.
- 4.2 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.
- 4.3 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.

#### **5. Background information**

##### **5.1 Kerswell Close development site**

- 5.1.1 The site is a car park and 'buffer' planting for the neighbouring estate of terraced housing at the junction of Seven Sisters Road and St Ann's Road. The layout of the estate has only rear elevations facing the site. To the south of the site there is a former public convenience previously operated as the Oriental Food Store which is now vacant.
- 5.1.2 The site is not subject to any designations or allocations in the Haringey Local Plan and the St Ann's Conservation Area lies a short distance to the west. The site has a high PTAL (4) and is located in a controlled parking zone. The site has good development potential to utilise and improve this underutilised area and provide high quality Council homes. The proposed scheme is in a location that has good transport links, schools, hospitals and other local amenities.
- 5.1.3 Re-development of this site will contribute to the Council's commitment to deliver Council homes as well as the Council's commitment to achieve growth and

sustainable communities. Delivery of the project will also seek to assist in building and retaining wealth in the community and reduce inequality, making Haringey a fairer place. Design and procurement processes will seek to address the Social Value agenda as far as possible and make a significant and positive difference to the ASB issues that currently blight the area.

## **5.2 Engagement and Consultation**

5.2.1 As a result of the pandemic the scheme proposals were presented to the public virtually via Microsoft Teams and by one in person Event held on Site.

5.2.2 Obligations to consult in line with Section 105 of the Housing Act 1985 were applicable for the Kerswell Close site. The Section 105 consultation period commenced on 10<sup>th</sup> May 2021 and ran until 13<sup>th</sup> June 2021. The Council consulted 36 households. In addition to consulting with secure tenants as required by law, the consultation included resident and non-resident leaseholders as a matter of good practice.

5.2.3 The Council's community engagement consultation period commenced on 28<sup>th</sup> February 2022 and ran until 20<sup>th</sup> March 2022. The Council consulted two hundred and fifty nine households (259). 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. Nineteen responses were received in total of which 8 were Positive, or, Very Positive, 3 were Neutral and 8 were Negative, or, Very Negative.

5.2.4 The Housing Engagement Team held two engagement events for residents on 9<sup>th</sup> March 2022 (17:00hrs) and an in-person Event on Site on 15<sup>th</sup> March 2022 (13:00hrs).

5.2.5 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.

5.2.6 The scheme was submitted to planning on 9<sup>th</sup> September 2022 and residents were formally consulted as part of this process. Planning committee approved a Resolution to grant Planning Consent on 29<sup>th</sup> November 2022.

## **5.3 The Build Contract**

5.3.1 This report is seeking final approval of the construction contract in order to enable the new build works to commence.

5.3.2 The Kerswell 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 twenty months.

5.3.3 A competitive tender was conducted via the Westworks Dynamic Purchasing

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System (DPS). A competitive tender is considered the preferred route for the appointment of a principal contractor.

- 5.3.4 Contractors were asked to respond to a 60% quality 40% price assessment. They responded with their proposals on 15<sup>th</sup> November 2022 and, following a further round of clarifications, responded again on 22<sup>nd</sup> December 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.
- 5.3.5 Costs were evaluated independently by the Project Team's Employer's Agent/Quantity Surveyor to ensure value for money in line with current market trends.
- 5.3.6 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.
- 5.3.7 The tender assumes signing of the contract and site possession in February 2023, as the tender offer remains open for twelve weeks from the return date.

## **5.4 Appropriation of Land**

- 5.4.1 This report seeks approval to appropriate the Kerswell 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.
- 5.4.2 The site is currently held for car parking purposes and is under-utilised.
- 5.4.3 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.
- 5.4.4 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 Kerswell 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.
- 5.4.5 The use of the powers contained in 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.

5.4.6 There is no reason to believe that any such rights will be significantly infringed by this development.

5.4.7 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.

## 5.5 Procurement Process

5.5.1 The contract was tendered via the Westworks Development and Construction DPS on 3<sup>rd</sup> October 2022.

5.5.2 Five tender submissions were received by the tender deadline date on 15<sup>th</sup> November 2022 and following a further request for additional information final responses were received on 22<sup>nd</sup> December 2022.

5.5.3 Tender submissions were checked for compliance and completeness by the Strategic Procurement team on 16<sup>th</sup> November 2022. All were found to be compliant and complete and were taken forward to evaluation.

5.5.4 The tenders were evaluated for Quality and Price as set out in the ITT document.

5.5.5 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.

5.5.6 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%)
Bidder 1	38.4	40	78.4
Bidder 2	45.6	31.6	77.2
Bidder 3	43.2	32.4	75.6
Bidder 4	48	26	74
Bidder 5	40.8	26.7	67.5

## 6. Management Plan

6.1 Kerswell Close is a small development of only twenty-five homes, two of which are Wheelchair Adaptable Homes which will be pre - allocated, therefore the issues of lengthy voids experienced at on other Schemes in the past should not apply.

- 6.2 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 Kerswell Close development.
- 6.3 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.
- 6.4 Kerswell 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.
- 6.5 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 their existing resources.

## **7. Contribution to Strategic Outcomes**

- 7.1 The recommendations in this report will support the delivery of the Housing Priority in the new Borough Plan, which sets out in its first outcome that *“We will work together to deliver the new homes Haringey needs, especially new affordable homes”*. Within this outcome, the Borough Plan sets the aim to *“Ensure that new developments provide affordable homes with the right mix of tenures to meet the wide range of needs across the borough, prioritising new social rented homes”*.

## **8. Statutory Officers comments (Chief Finance Officer (including procurement), Head of Legal and Governance, Equalities)**

### **8.1 Legal**

- 8.1 The Head of Legal and Governance (Monitoring Officer) has been consulted in the preparation of the report.

- 8.1.2 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”.

- 8.1.2 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.
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- 8.1.3 The requirements of Section 122 LGA 1972 set out above are satisfied in respect of the site at Kerswell 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.

- 8.1.4 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.

- 8.1.5 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.

- 8.1.6 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.

- 8.1.7 The Council will be seeking to appropriate the site at Kerswell Close following practical completion, timetabled for August 2025 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.

- 8.1.8 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.



8.1.9 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.

8.1.10 The Cabinet Member for Council Housebuilding, Placemaking, and Development has power under Contract Standing Order 16.02 to approve the award of contract.

## 8.2 Procurement

8.2.1 Strategic Procurement confirms the Council is able to access and procure works via the Westworks Dynamic Purchasing (DPS) system.

8.2.2 Strategic Procurement provided the necessary support for this procurement and can confirm the process is undertaken in accordance with Contract Standing order 9.04.1. and is consistent with the process described in paragraphs 5.21 – 5.27 above.

## 8.3 Finance

8.3.1 The scheme will deliver twenty-five units of Council rented homes on completion at a total construction contract value outlined in the Exempt part of the report.

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

8.3.3 Further finance comments are contained in the exempt report.

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

## 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 twenty-five new Council rented homes at Kerswell Close, N15 5RP: this includes the appointment

of a contractor, the appropriation of land at Kerswell Close, and approval of plans to override easements and other rights of neighbouring properties.

8.4.4 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 LGBTQ+ and individuals with disabilities are known to be vulnerable to homelessness. It is further noted that two of the twenty-five 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.

8.4.5 As an organisation carrying out a public function on behalf of a public body, the Contractor, will be obliged to have due regard for the need to achieve the three aims of the Public Sector Equality Duty as stated above. Appropriate contract management arrangements will be established to ensure that the delivery of the major works does not result in any preventable or disproportionate inequality.

## **9 Use of appendices**

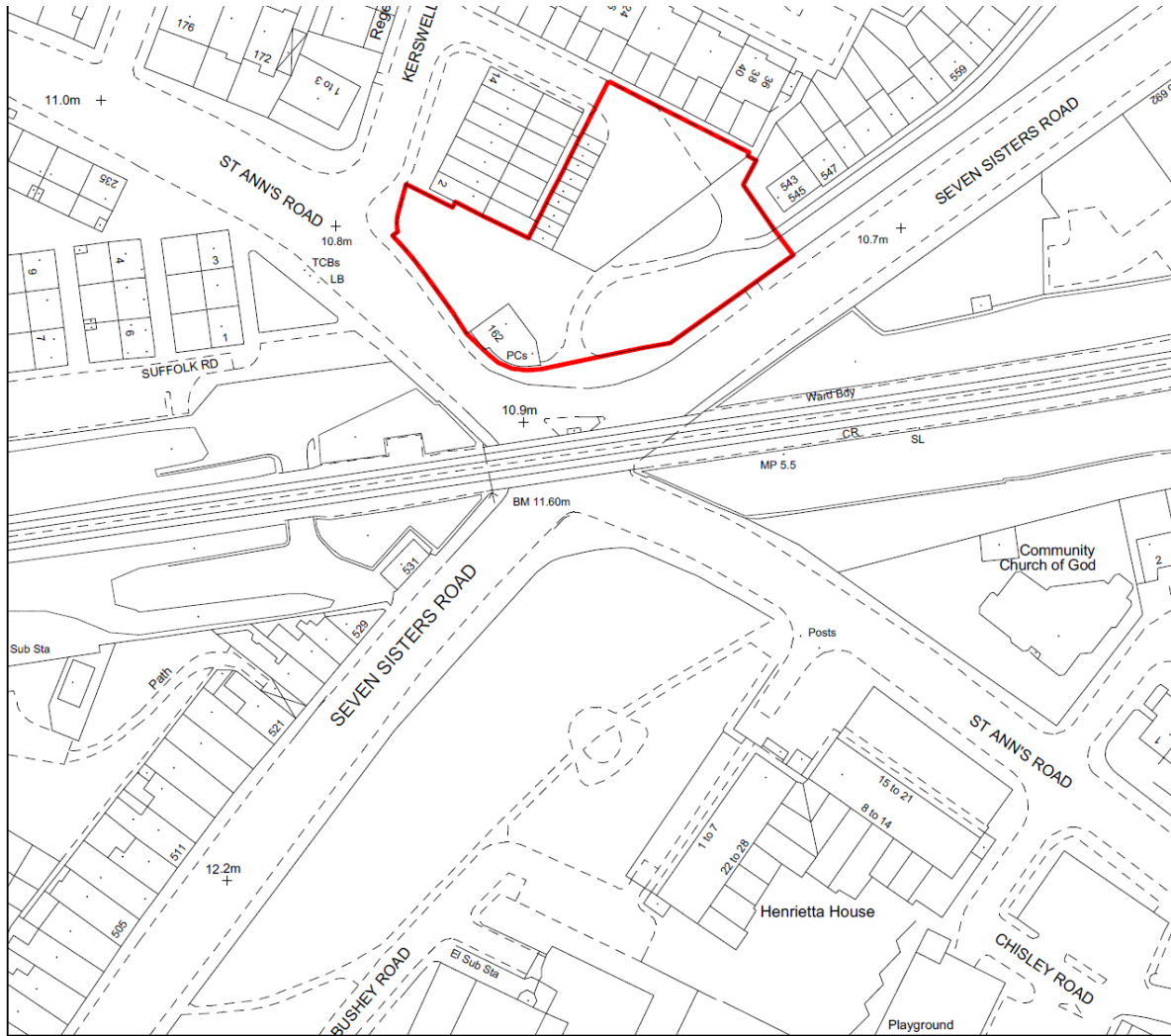
Appendix 1 – Red line boundaries Kerswell Close.

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

## **10 Local Government (Access to Information) Act 1985**

Appendix 2 is NOT FOR PUBLICATION by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information)

## APPENDIX 1



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**Land at Kerswell Close  
(junction with Seven Sisters Road)  
Tottenham  
LONDON  
N15 5HT**

**Red verging - Extent of site**

Deed packet no. : Freehold 6193

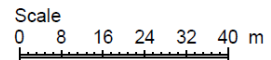
Title no. : Freehold EGL163230

Site area in hectares : 0.2360 ha

CPM no.      Commercial file ref.

Overlay : HSS - misc.

Plan produced by Janice Dabinett on 07/03/2014



Scale 1:1250

BVES Drawing no. A4 2773