

Report for: 5 December 2023 Cabinet

Title: Brunel Walk and Turner Avenue, N15 – Approval of housing construction contract and land appropriation

Report

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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 Cabinet is asked to approve the appointment of the recommended contractor to complete a new build development of 45 new Council homes comprising 8 x one-bed two-person homes, 16 x two-bed four-person homes and 21 x three-bed five-person homes on Council land at Brunel Walk N15 and enhancement of existing Turner Avenue Estate amenity edged red on the 'Development Plan' attached at Appendix 1 being the 'Brunel Walk and Turner Avenue development site'. The location of the proposed new homes is shown hatched red on the plan at Appendix 1. All 45 new council homes will be let at Social Rent.
- 1.2 Cabinet 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 and compensation of any potential claimants) and then to appropriate the land back to housing following practical completion of the development.

2. Cabinet Member Introduction

The proposals for Brunel Walk showcase our borough's approach to placemaking which lies at the heart of Haringey's council house programme: we are aiming to deliver 45 new council rent homes, including a large number of family sized homes for local residents, and make a substantial investment in improvements to the adjacent estate that the community can enjoy.

The council has committed to building 3,000 new council homes by 2031 to help tackle the acute need for affordable housing in the borough, a demand that is being directly caused by the national housing crisis. Haringey is already making great strides towards this target, with work either completed or under way on over 2,000 homes across our borough.

The Brunel Walk scheme will be particularly important to overcrowded families in the local area: just under half of the homes will be three bedrooms. Under Haringey's

Neighbourhood Moves policy, which gives priority to tenants on our waiting list with high housing need, local families around Brunel Walk who desperately require a larger home are likely to benefit particularly from this scheme.

In addition, the approved proposals for this site will make a significant contribution to the placemaking aims of our housing delivery programme, with extensive plans for local communal space improvements that will benefit existing as well as new residents: this includes significant investment in a local play area, and the planting of 68 new semi-mature trees alongside extensive green landscaping, which we will design in co-operation with local residents.

All homes will have high levels of insulation and incorporate green roofs, efficient heating systems and solar panels that will keep running costs low and avoid overheating. They will be constructed with responsibly sourced and environmentally friendly materials.

3. Recommendations

3.1. Cabinet 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 45 new homes at Brunel Walk and enhancement to the Turner Avenue estate amenity for a total contract sum set out in the exempt part of the report; and approves the client contingency sum set out in the exempt part of the report.
- 3.1.2 To approve the appropriation of the Brunel Walk and Turner Avenue 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 Brunel Walk and Turner Avenue estate development, under planning permission Ref: HGY/2022/2723.
- 3.1.4 To delegate to the Director of Placemaking & Housing, after consultation with the Director of Finance and the Cabinet Member for Council House building, Placemaking, and Local Economy, authority to make payments of compensation as a result of genuine claims of third party rights affected by the Brunel Walk and Turner Avenue 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 Brunel Walk and Turner Avenue 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 6.15 of this report.

4. Reasons for decisions

- 4.1. The site known as Brunel Walk was approved by Cabinet in July 2019 to be included in the Council's Housing Delivery programme. Resolution to grant was received at the 16th January 2023 Planning Committee and the Decision Notice was received on 4th April 2023. 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: Resolution to grant was received at the 16th January 2023 Planning Committee and the Decision Notice was received on 4th April 2023, and no applicable concerns about the loss of rights were raised during extensive local engagement and consultation, including a Section 105 consultation in February-March 2021 with residents. However, appropriation of the Brunel Walk development site for planning purposes is recommended as a precaution. It will allow the Council to use the powers contained in Section 203 of the Housing and Planning Act 2016 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 45 new Council homes.
- 4.4. The site proposal will provide 45 much needed Council homes on Council land, with 21 of these being large, 3-bed, five-person family homes which are in particularly high demand. Additional works proposed include extensive enhancements to the adjoining Turner Avenue estate, with much needed security measures including CCTV and lighting to prevent crime and anti-social behaviour.
- 4.5. These 45 homes will also contribute to our commitment to start 500 homes on site as part of the GLA 21-26 Affordable Homes Programme and our political aspiration to build 3000 Council homes by 2031.

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 the estate vulnerable to further issues of anti-social behaviour and crime.
- 5.2. This opportunity was procured via a restricted, competitive tender to the open market (Find a Tender) using the JCT Design & Build Contract 2016 with amendments, the

route recommended by Strategic Procurement for a contract of this value. The alternative option would have been a competitive tender via the London Construction Programme (LCP) Major Works 2019 Framework Agreement or the Westworks Procurement Ltd Development and Construction Dynamic Purchasing System. Both options were rejected because an Expression of Interest exercise through the LCP was unsuccessful and the 2022 tender via Westworks failed to secure a viable bid.

- 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

Brunel Walk and Turner Avenue estate development site

- 6.1. As shown in the 'Development Plan' in Appendix 1, the site encompasses Brunel Walk which is accessed exclusively from Kirkton Road, and the adjacent Turner Avenue estate which is accessed from West Green Road to the north, Elmar road to the west and Kirkton Road to the east.
- 6.2. Brunel Walk previously housed a row of 36 temporary accommodation homes, 33 of which were 1-beds. The homes were in a poor condition and there were exceptionally high levels of crime and numerous incidents of antisocial behaviour across the five blocks of Brunel Walk. These blocks were demolished in October 2022 in order to address the escalating issues and safeguard the local community. The 45 proposed new homes will be built on this southern area of the site.
- 6.3. The three existing residential buildings across the Turner Avenue estate are currently undergoing refurbishment works as part of the Council's Decent Homes programme and do not form part of this proposed development. However, the proposed works will reconfigure and enhance the open areas around and between the buildings. Residents have reported crime and anti-social behaviour which the scheme proposals are designed to tackle, with improvements such as the introduction of CCTV and lighting as advised by the Metropolitan Police Secured by Design consultant.
- 6.4. The Clyde Circus Conservation Area is located to the north of the site, encompassing

parts of West Green Road including the Fountain Hotel and eastern terrace on the junction of Kirkton and West Green Road. The immediate local area is characterised by the three 4-4.5 storey brick and render buildings of Turner Avenue estate. West Green Road is a mix of retail and residential buildings ranging from 2-5 storeys, with a variety of frontages. The predominantly Victorian terraces of Kirkton, Elmar and Seaford Road range from 2-2.5 storeys, many with rear extensions, loft conversions and substantial dormer windows.

- 6.5. This land is Council-owned and held in the Housing Revenue Account (HRA).
- 6.6. In July 2019, Cabinet approved the inclusion of Brunel Walk 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.
- 6.7. Designs have been developed and approved that will deliver 45 homes at Brunel Walk; 8 x one-bed two-person homes, 16 x two-bed four-person homes and 21 x three-bed five-person homes.
- 6.8. Resolution to grant was received at the 16th January 2023 Planning Committee and the Decision Notice was received on 4th April 2023.

Engagement and Consultation

Section 105 consultation

- 6.9. Obligations to consult in line with Section 105 of the Housing Act 1985 were applicable for the Brunel Walk and Turner Avenue estate site. The Section 105 consultation period commenced on 22nd February 2021 and ran until 22nd March 2021. The Council consulted 70 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.
- 6.10. Two engagement sessions for consultees and the wider community were held online due to the Covid-19 pandemic on March 3rd 2021 at 1pm and March 9th 2021 at 6pm, with a recording available online for those unable to attend.
- 6.11. The Section 105 consultation received 6 responses from the 70 households consulted; 3 from secure tenants and 3 from leaseholders.
- 6.12. The outcomes of the Section 105 consultation (see appendix 4 attached) were positive, recommending that the Council proceed with the scheme, incorporating feedback received regarding estate storage, electric car charging, responding to anti-social behaviour and parking concerns.

Community engagement

- 6.13. The Council's community engagement period commenced on 20th August 2021 and ran until 13th September 2021. The Council invited comment on the development proposals from 948 households via a consultation pack postal drop. It should be noted that local residents outside of the letter drop area were also able to comment via the

Commonplace website.

- 6.14. The Housing Engagement Team held two engagement events for residents: an in-person event on the Turner Avenue estate on 4th September 2021 from 11am to 3pm and an online event via Microsoft Teams on 7th September 2021 at 6pm.
- 6.15. The community engagement period received 49 responses with 64% being a 'very positive' or 'positive' response to the proposals.
- 6.16. The outcome of the engagement (see appendix 5) was positive, with the project team acknowledging comments regarding estate facilities, anti-social behaviour concerns, parking and building form.

Planning consultation

- 6.17. The planning application for the scheme was submitted on the 7th October 2022 and local residents were again formally consulted as part of the planning process.
- 6.18. There is no evidence to indicate that any third-party rights would be infringed by the Brunel Walk and Turner Avenue development: Resolution to grant was received at the 16th January 2023 Planning Committee and the Decision Notice was received on 4th April 2023 and no concerns about the loss of rights were raised during extensive local engagement and consultation with residents.

The Build Contract

- 6.19. This report is seeking approval for the award of the construction contract to enable the new build works to commence.
- 6.20. The housing scheme at Brunel Walk and Turner Avenue has been designed up to stage 3 of the Royal Institute of British Architects (RIBA) Plan of Works 2019. Following planning approval being granted, a contractor is needed to develop the technical design and complete the new build works. It is currently anticipated that the contract period will be 26 months as per Contractor A's proposed programme, submitted as part of their tender.
- 6.21. The project tender process involved first publishing the PAS91 Selection Questionnaire to the Open Market via Find a Tender. This exercise constitutes a "restricted tender process". Following this, all suppliers who submitted a compliant response were invited to proceed to the next stage; Invitation to Tender.
- 6.22. In total four suppliers opted into the tender opportunity. One supplier opted out during the tender period citing insufficient resource to respond within the extended tender window. The three remaining suppliers responded.
- 6.23. Bidders were asked to respond to a 60% price, 40% 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.
- 6.24. 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.

- 6.25. The project team's Cost Consultant was assigned to independently evaluate the cost to ensure value for money in line with current market trends. A number of requests for clarification were issued with the responses analysed to establish robust costing for the Council. The Cost Consultant report has been provided in Appendix 3.
- 6.26. 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.
- 6.27. The recommendation is therefore to award the contract to Contractor A, as set out in the exempt part of the report, Appendix 2.
- 6.28. The contract is to be awarded on a fixed price basis. It is to include new build works, wider estate landscaping works, site establishments, design works, site enabling, management costs, overheads and profits and there is a defects liability period of 24 months.
- 6.29. The tender assumes signing of the contract and site possession by February 2024, to allow start on site in March 2024 with completion expected in April 2026.

Appropriation of land

- 6.30. The Brunel Walk and Turner Avenue development site edged red on the plan titled 'Development Plan' attached at Appendix 1, is currently held for housing purposes. The site sits to the south of the Turner Avenue estate and is accessed from Kirkton Road. The former blocks of Brunel Walk were demolished in October 2022 as per section 6.2 of this report. In order to carry out the proposed Brunel Walk and Turner Avenue 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 in order to have the benefit of S203 HPA 2016. The Council can appropriate as it is no longer required to be used as a Temporary Accommodation site. The Turner Avenue estate, including the surrounding open spaces will also comprise enhancement works to the landscaping.
- 6.31. 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.
- 6.32. 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 Brunel Walk and Turner Avenue 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. Unless the site is appropriated as recommended, interference with any such right may entitle the owner of that right to seek an injunction preventing the development from going ahead. The Council will pay compensation where a legal basis for such payments is established, in substitution for their right to seek damages for the interference.

- 6.33. 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.
- 6.34. Following the public consultation events, there has not been any evidence presented of potential claims that any third-party rights would be infringed by the proposed development.
- 6.35. 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. 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.

7. Contribution to the Corporate Delivery Plan 2022-2024 high level Strategic Outcomes

- 7.1. The recommendations in this report will support the delivery of Theme 5: ‘Homes for the future’, which sets out to increase the number and variety of high-quality and sustainable homes in the borough.

8. Carbon and Climate Change

- 8.1. The proposals for the Brunel Walk development have set a target of achieving net zero operational carbon. Designed in-line with Passivhouse principals, the designs have been developed to optimise the orientation, glazing, shading and air-tightness of the homes.

Low-carbon technologies such as Mechanical Ventilation with Heat Recovery (MVHR), Heat Pumps and Photo Voltaic panels (PVs) contribute to an on-site reduction of regulated carbon dioxide emissions of 101.2% over Part L 2013 Building Regulations.

Sustainable urban drainage measures such as rainwater attenuation tanks, permeable paving and green roofs show a betterment to the existing 1 in 100 year peak discharge rates of 98%.

The landscaping proposals, including 68 new semi-mature trees, aim to deliver a biodiversity net gain of 23.3%, significantly higher than the 10% required by the Environment Act 2021.

9. Statutory Officer Comments

9.1. Legal

9.1.1 The Council holds the site for housing purposes but will be carrying out a redevelopment which may affect third party rights. In order to override any third-party rights affecting the site, the Council will need to appropriate the site for planning purposes. The Council may appropriate land from housing purposes to planning purposes under Section 122 of the Local Government Act 1972 and in order to engage Section 203 HPA 2016.

9.1.2 Section 122 LGA 1972 allows the Council to appropriate land for any purpose for which the council is authorised by statute to acquire by agreement which belongs to it and is no longer required for the purpose for which it is held immediately before the appropriation.

9.1.3 The requirements for the purpose of Section 122 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.

9.1.4 The site to be appropriated does not contain open space.

Section 203 of the Housing and Planning Act 2016

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

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

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

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

Appropriation for Housing Purposes

9.1.8 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.

Consultation

9.1.9 Consultation of resident secure tenants pursuant to section 105 of the Housing Act 1985 was required before commencing this development; it is the Council's practice to include other residents in any such consultation. The consultation materials were approved before the consultation was carried out as set out in the body of the report.

9.1.10 The Council has carried out further engagement and consultations as set out in this report.

9.1.11 The 'Sedley principles' as enunciated in the case of Mosley must be adhered to in relation to consultation. These are:

- That consultation must be at a time when proposals are still at a formative stage;
- That the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response;
- That adequate time must be given for consideration and response; and
- That the product of consultation must be conscientiously taken into account in finalising any statutory proposals.

9.1.12 In making any decision as recommended Cabinet must therefore conscientiously consider the product of the consultations referred to in this report.

9.1.13 The contract which this report relates to has been procured in accordance with the Public Contracts Regulations 2015.

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

9.2. Procurement

9.2.1 A competitive tender process was undertaken in line with regulation 28 of the Public Contracts Regulation 2015.

Strategic Procurement support the recommendation to approve the award in accordance with CSO 9.07.1(d).

9.3. Finance

9.3.1. The scheme will deliver 45 council homes to be let at social rent.

9.3.2. The total schemes cost has been assessed and can be contained within the HRA.

9.3.3. Further finance comments are contained in Appendix 2 – Exempt Report attached.

9.4. Equality

9.4.1 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.

9.4.2 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.

9.4.3 Although it is not enforced in legislation as a protected characteristic, Haringey Council treats socioeconomic status as a local protected characteristic.

9.4.4 The proposed decision relates to new build works to provide 45 new Council homes at Brunel Walk N15. The decision will increase the supply of Council homes. This will have a positive impact on individuals on the housing register, especially families in need of 3-bed homes, which includes people in severe housing need and people currently living in temporary accommodation. Data held by the council suggests that women, young people, those from a lower socio-economic background and BAME people 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 and this decision will therefore positively advance the public sector equality duty in Haringey.

9.4.5 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.

10. Use of appendices

Appendix 1 – Brunel Walk and Turner Avenue Development Plan, CGI of proposed new development and floor layout.

Appendix 2 – Exempt financial report

Appendix 3 – Exempt tender cost report

Appendix 4 – S105 consultation report

Appendix 5 – Community engagement summary

11. Local Government (Access to Information) Act 1985

11.1. 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).