



Cabinet



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Report for:	Cabinet
Title of report:	Appointment of a Principal Contractor for Paradise Depot & Appropriation of Paradise Depot site for Planning Purposes
Date:	25 April 2023
Report on behalf of:	Councillor Margaret Griffiths, Portfolio Holder for Housing
Part:	Part I with Part II procurement report annexed
If Part II, reason:	
Appendices:	Appendix A – Proposed Development Plan Appendix B – Site Plan Appendix C – Community Impact Assessment
Background papers:	
Glossary of acronyms and any other abbreviations used in this report:	DMC – Development Management Committee GF – General Fund HRA – Housing Revenue Account ITT – Invitation to Tender JCT – Joint Contracts Tribunal

Report Author / Responsible Officer

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<p>Corporate Priorities</p>	<ul style="list-style-type: none"> • A clean, safe and enjoyable environment • Building strong and vibrant communities • Ensuring economic growth and prosperity • Providing good quality affordable homes, in particular, for those most in need • Ensuring efficient, effective and modern service delivery • Climate and ecological emergency
<p>Wards affected</p>	<p>Hemel Hempstead Town</p>
<p>Purpose of the report:</p>	<p>To be read in conjunction with Part II.</p> <ol style="list-style-type: none"> 1. To seek approval to award the main contract and appoint a Principal Contractor to construct 56 flats and a stand-alone commercial building at Paradise Depot. 2. To provide delegated authority to the Council's Assistant Director (Legal & Democratic Services) to execute and complete all legal agreements ancillary to the JCT Design & Build Contract 2016 and/or reasonably required to complete the Project, including (but not limited to): <ol style="list-style-type: none"> a. all professional appointments; b. collateral warranties; and c. Agreements under <ul style="list-style-type: none"> S.38, & S.278, of the Highways Act 1980; S.247, Part III of the Town and Country Planning Act 1990; S.104 of the Water Industry Act 1991, and S.50 of the New Roads and Street Works Act 1991.
<p>Recommendation (s) to the decision maker (s):</p>	<p>Principal Contractor Appointment</p> <p>That Cabinet:</p> <ol style="list-style-type: none"> 1. Agrees to award the main contract to construct 56 social rented homes and a stand-alone commercial building to ARJ Construction Ltd. 2. Delegates authority to the Assistant Director (Legal & Democratic Services) to execute and complete all legal agreements ancillary to the JCT Design & Build Contract 2016 and/or reasonably required to complete the Project, including (but not limited to): <ol style="list-style-type: none"> a. all professional appointments;

	<p>b. collateral warranties; and c. Agreements under S.38, & S.278, of the Highways Act 1980; S.247, Part III of the Town and Country Planning Act 1990; S.104 of the Water Industry Act 1991, and S.50 of the New Roads and Street Works Act 1991.</p> <p>Land Appropriation</p> <p>That Cabinet:</p> <p>3. Confirms that Paradise Depot is no longer required for its current purpose.</p> <p>4. Agrees to delegate authority to the Chief Housing Officer to apply for consent, pursuant to section 19 Housing Act 1985, to the Secretary of State for Levelling Up, Housing and Communities (or equivalent successor title) to appropriate the Site.</p> <p>5. Agrees to delegate authority to the Chief Housing Officer to take all necessary steps to appropriate the HRA Land from the Housing Revenue Account for planning purposes and the garages held within the General Fund within the Site for planning purposes, pursuant to Section 122 of the Local Government Act 1972 and Section 227 of the Town and Country Planning Act 1990.</p> <p>6. Agrees to delegate authority to the Chief Housing Officer to use the powers to over-ride third party rights under section 203 of the Housing and Planning Act 2016 according to the principles set out at paragraph 10.15 in this report.</p> <p>7. Agrees to appropriate the Site at Paradise Depot for planning purposes for the construction of the new build 56 Council houses as set out in Part II of the report.</p>
<p>Period for post policy/project review:</p>	<p>There will be a 12-month defect liability period after practical completion. A 2-year review period is therefore recommended for this project.</p>

1 Introduction/Background:

Since 2013, the Council has delivered 356 new Council homes in the Borough.

Paradise Depot is situated on Paradise Industrial Estate, approximately 0.2km to the east of Hemel Hempstead town centre. The site extends 0/4HA and currently accommodates a food bank, used by DENS, and a car repair workshop, dealership and associated parking. There are established trees running along the north and west boundary.

The existing buildings will be demolished and replaced with a mixed-used development comprising a 2 storey commercial building, with a food bank, bike workshop, office space and café area for DENS and a 7-storey residential building providing 56 x 1 and 2 bed apartments for social rent.

A full planning application was submitted in October 2021 and was recommended for approval at committee in July 2022. Formal approval was issued on Thursday 30th March 2023, having been delayed due to the Chilterns Beechwood Moratorium and approval of the associated legal agreements.

The building names 'Eden Court' (Residential Building) and 'East of Eden' (Commercial Building) have been agreed with The Council's Address Management Team.

See Appendix A for a proposed site layout of the scheme.

2 Proposals:

Principal Contractor Appointment

In October 2022, an Invitation to Tender (ITT) was advertised on the Supply Hertfordshire Portal, Find a Tender Service and Contracts Finder. Four submissions were received and evaluated in line with the methodology set out in the tender documentation.

The scoring methodology, to adjudicate tenders, relates to quality and technical merit (equating to 70% of the overall marks available) and the pricing element (equating to 30% of the overall marks available).

The adjudication process was completed by the Housing Development Team and the Council's Employers Agent, BPM Project Management Ltd. Following a robust scoring process of the qualitative responses, it was recommended that two of the four bidders would be invited for a final tender clarification interview.

The highest scoring bid, after the interview stage, was from ARJ Construction Ltd. Therefore, the recommendation is to appoint ARJ Construction Ltd as the Principal Contractor on Paradise Depot.

Programme

The programme for the development of the scheme is:

- Planning Approval – Approved 30th March 2023
- Principal Contractor – Appointment: April 2023, and in contract June 2023
- Site Possession – July 2023
- Start on Site – October 2023
- Delivery of DENS Building – June 2025
- Practical Completion – December 2025

Land Appropriation

In order to ensure a continued pipeline of the future affordable housing development sites, this report also seeks approval to consider the appropriation of General Fund land, as shown as Appendix B, for planning purposes and then the subsequent appropriation of the site from planning purposes to housing to be held under the HRA at market value.

A red book valuation was carried out by Brasier Freeth in August 2020.

3 Consultation:

A list of consultees for this decision are as follows:

- Portfolio Holder for Housing
- Chief Housing Officer
- Chief Finance Officer
- Assistant Director – Legal and Democratic Services
- Assistant Director – Strategic Housing and Delivery
- Procurement Lead Officer, Commissioning, Procurement & Compliance

4 Financial and value for money implications:

The overall HRA development budget is reviewed strategically as part of the annual review of the Housing Revenue Account Business Plan. Each individual scheme, following contract award, is subject to close financial monitoring with any variances agreed formally through a change control methodology.

The lifting of the HRA borrowing cap has provided the opportunity to take out additional borrowing, through the Public Works Loan Board, enabling the expansion of the new build programme in a sustainable and affordable way.

This has been achieved through a successful procurement programme involving an open tender process managed by the Council's Procurement Team.

Land purchases / appropriations are in line with Red Book valuations to ensure value for money. Cabinet agreed to the transfer of the site from the General Fund into the Housing Revenue Account (HRA) on the 21st September 2021 for a figure in accordance with the Red Book valuation completed by Brasier Freeth in 2020.

Full financial appraisals are undertaken prior to contract award, including financial analysis of recently published accounts. An assessment of the bidder's financial standing was carried out by the Council's Finance Department based on the bidders' set of accounts in the last 3 financial years and a credit reference report. The recommended successful bidder passed this financial evaluation.

The Council also uses external financial analysis services from Dun and Bradstreet to help assess risk and creditworthiness associated with contractors. As part of this we receive regular updates on the financial status of our key contactors.

5 Legal Implications:

Land Appropriation

The purpose for which the local authority is appropriating the land must be authorised by statute. Further to section 17(1)(a) of the Housing Act 1985, a local housing authority may acquire land for development purposes.

Section 203 of the Housing and Planning Act 2016 provides that, where land has been appropriated for planning purposes, then existing rights, which could prevent the development from being carried out in accordance with the planning permission, can be overridden, subject to payment of compensation to the affected parties. By virtue of appropriating under section 122 LGA, section 203 will be enabled.

Pursuant to section 120 of the Local Government Act 1972 ("LGA"), the Council has the power to acquire land for the purposes of (a) any of the Council's functions under the Local Government Act or (b) for the benefit, improvement or development of the area. The report sets out how these requirements are met.

In addition to the above power, further to section 9 of the Housing Act 1985, a local authority may provide housing accommodation by erecting houses or converting buildings into houses on land acquired by them.

Pursuant to section 122 (1) of the LGA, a local authority may appropriate land for any purpose for which it is authorised to acquire land, when the land is no longer required for the purposes for which it is held. In reaching this decision, the Council must consider the public need within the area for the existing use. The proposed scheme of 56 new units will provide much needed social housing which would outweigh the public need for the current use of the Site.

The purpose for which the local authority is appropriating the land must be authorised by statute. Further to section 17(1) (a) of the Housing Act 1985, a local housing authority may acquire land for housing purposes. Section 19 of the Housing Act 1985 prevents a local authority from appropriating land held in the Housing Revenue Account consisting of a house or part of a house without the consent of the Secretary of State for Levelling Up, Housing and Communities.

Section 227 of the Town and Country Planning Act 1990 authorises a local authority to acquire land by agreement for a purpose for which the local authority may be authorised to acquire land under section 226 Town and Country Planning Act 1990. As a result, the appropriation of the Site to planning purposes must be made pursuant to section 122 Local Government Act 1972 and section 227 Town and Country Planning Act 1990.

Section 226 of the Town and Country Planning Act 1990 ("1990 Act") provides authorisation for the appropriation of land for planning purposes. Section 226 states that that a local authority (subject to the authorisation of the Secretary of State) has the power to compulsorily acquire any land in their area, if it considers that this will facilitate the carrying out of a development, redevelopment, or improvement on or in relation to the land, or is required for a purpose which is necessary to achieve in the interests of the proper planning of an area.

By virtue of s 226(1A) TCPA a local authority must not exercise the power granted under s226(1)(a) unless the development, redevelopment or improvement on or in relation to the land is likely, they think, to contribute to the achievement, the promotion or improvement of any one of more of the following objectives - the economic, the social and/or the environmental wellbeing of the area.

Under Section 226(1A) of the 1990 Act, a local authority may not acquire land compulsorily, for the purpose facilitating the carrying out of development, unless they consider that the development is likely to contribute to the achievement of one or more of the following objectives:

- a) the promotion or improvement of the economic well-being of their area;
- b) the promotion or improvement of the social well-being of their area;
- c) the promotion or improvement of the environmental well-being of their area.

A resolution to grant planning permission has been secured for the redevelopment of the Site (with planning reference) 21/04352/MFA. It is considered that the redevelopment would result in the improvement of the economic, social and environmental well-being of the area, by sustainably providing a significant number and mix of high quality Council-built homes, which would contribute to the Council's identified affordable housing need. The redevelopment of the Site will provide local people with high-quality, affordable accommodation, improvements to local infrastructure and potential employment opportunities from the construction process. Accordingly in the Council's view, the redevelopment would contribute to the economic and social well-being of the area, fulfilling the requirements of section 226(1A) of the 1990 Act.

Section 203 of the Housing and Planning Act 2016 ("2016 Act") provides that where land has been appropriated for planning purposes then existing rights, which could prevent the development of that land from being carried out in accordance with the planning permission can be overridden, Any third party claiming the benefit of a third party right is prevented from taking injunctive action against the Council thus preventing development. There remains however a right to compensation for loss of the right, calculated in accordance with the statutory compensation code based on the diminution in value of the land affected as a result of the loss or injury to the third party.

Reliance on s203 of the Housing and Planning Act 2016 to override the rights of adjoining Owners, and any other property rights on an appropriation of land for planning purposes is dependent, upon the requirements in s226 Town and Country Planning Act 1990 (TCPA).

For section 203 to be utilised or relied upon, the development must receive planning permission and the Council must hold an appropriate interest in the land. The Council will also need to be satisfied that the requirements set out in section 226(1A) of the 1990 Act are met, and would need to consider whether an interference with the rights of third parties would be justified.

The use of section 203 powers would have the effect of ensuring that previously unknown interests do not frustrate the process of development, and is considered necessary in order to facilitate the proposed scheme of development.

The enabling provisions in s203 (1) and (4) of the Housing and Planning Act 2016 are required for the construction, maintenance and use of the redevelopment, to the extent that this will interfere with private rights of adjoining owners. Several adjoining private landowners enjoy rights of lights ("Dominant Owners") which will be affected by the new development. The operative provisions in section 203-207 are necessary in order to override these rights as well as to override other property rights, including any unknown rights that may impede the construction or use of the units in the Paradise Depot redevelopment.

The Council has carried out a report on title that has not identified specific private rights or any beneficiaries of private rights that affect the Site but, given the previous use of the Site, it is considered prudent to appropriate the Site for planning purposes to engage the powers within Section 203 to override any third party rights and convert them into a right to claim compensation.

As set out above, the Council considers that the redevelopment would result in the improvement of the economic, social and environmental well-being of the area. There may be a minor impact or infringement of the rights of as-yet-unknown persons, but the Council considers that, on balance, an interference with those rights would be in the public interest and would be justified in the context of the benefits of the proposed redevelopment.

The Site will not be appropriated for planning purposes until:

- i. the outcome of the advertisement process required by section 122(2A) of the Local Government Act has been completed and any representations received have been properly considered; and

- ii. Consent from the Secretary of State to appropriate the HRA Land for planning purposes pursuant to Section 19 Housing Act 1985 has been granted.

6 Risk implications:

A risk assessment has been completed for this project by the Project Manager and Employers Agent and will be reviewed monthly from the award of contract.

7 Equalities, Community Impact and Human Rights:

A Community Impact Assessment has been completed – See Appendix C. There are no detrimental impacts.

These proposals will have a beneficial impact on low income households. Homes are developed and allocated in line with the demand for social housing and are let in accordance with the Council's Housing Allocation Policy to those households in greatest need. Improved community facilities being built as part of these plans will also have a positive impact.

There are no Human Rights implications arising from this report.

8 Sustainability implications (including climate change, health and wellbeing, community safety):

The scheme has been designed with consideration to secured by design standards, and it incorporates high energy efficiency and sustainability features. The construction specification has been produced to significantly exceed building regulation requirements for environmental standards and to achieve an energy performance certificate level of B.

9 Council infrastructure (including Health and Safety, HR/OD, assets and other resources):

Each new build scheme has in place a Principal Designer and Construction Design and Management Regulations (CDM) Advisor. Contractors are required to comply with the Council's Health and Safety (H&S) Policy along with Considerate Constructors requirements. Health & Safety is identified as a key risk of the Housing Service and is reported to the Council's Housing and Communities Overview and Scrutiny Committee on a quarterly basis. To ensure compliance, monthly site checks are carried out on behalf of the Council to ensure adherence to H&S procedures.

10 Statutory Comments

Land Appropriation

Monitoring Officer:

The appropriation powers have been set out in the body of the report. The use of appropriation power needs to be justified by a clear 'public interest' case that overrides the individual rights of potential affected third party owners and occupiers of nearby properties.

The report explains the rationale for the public interest test and it is concluded the relevant tests are met.

The procurement of the contractor has followed an open market tender process which should ensure that the Council obtains value for money.

Deputy S151 Officer:

The appropriation of General Fund property and land to the HRA requires a technical adjustment to reduce the Capital Financing Requirement (CFR) of the General Fund and adjustment to increase the CFR of the HRA by the market value of the transfer. The CFR is an indication of the Council's underlying need to borrow as a result of capital investment, and hence this ensures the GF and HRA CFRs are correct.

12 Conclusions & Recommendations

Appointment of Principal Contractor

After an open tender procurement process, four tenders were returned, of which after detailed evaluation and analysis, only one compliant tender was validated on both price and quality. The process included an assessment of the contractors' experience, knowledge and compliance. The highest scoring tender was returned by ARJ Construction Ltd.

The report seeks to recommend the award of the main contract to construct 56 No. social rented homes and a standalone commercial unit at Paradise Depot to ARJ Construction Ltd.

The procurement of land at Paradise Depot is contained within the agreed development budget agreed as part of the HRA business plan and is reviewed annually as part of the HRA budget setting process.

Land Appropriation

In order to support the delivery of the Paradise Depot project this report seeks approval to consider the appropriation of General Fund Land and HRA properties for planning purposes and subsequently to the Housing Revenue Account for Housing Development purposes.

By exercising its appropriation powers, the Council will ensure that its redevelopment of the land proceeds in accordance with the planning permission already granted.