

	<h2 style="margin: 0;">Assets, Regeneration and Growth Committee</h2> <p style="margin: 0;"><b>27<sup>th</sup> November 2018</b></p>
<b>Title</b>	<b>UPPER and LOWER FOSTERS</b>
<b>Report of</b>	Councillor Daniel Thomas
<b>Wards</b>	Hendon
<b>Status</b>	Public
<b>Urgent</b>	No
<b>Key</b>	Yes
<b>Enclosures</b>	Appendix A – Upper & Lower Fosters Estate Plan, Proposed Master Plan Drawing
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## Summary

Upper and Lower Fosters is a typical post-war council estate comprising high-rise tower blocks and low-rise apartment buildings. This report sets out progress to date and seeks approval to spend the remaining money allocated in the original Capital budget to progress the design to the next stage and to apply for and secure planning. The progression of subsequent development phases will be reported in the Outline Business Case. The scheme impacts on c.118 pram sheds occupied by either tenants or leaseholders on the Estate vacant possession of which will be required to enable the development. The Council has considered its various options to enable the development of the site having regard to this aspect which include the possibility of using Council's compulsory purchase powers as may be required.

## **Officers Recommendations**

- 1. That the committee notes the progress of the Upper and Lower Fosters Scheme to date**
- 2. That the committee approves the balance of Capital budget as required to: (1) progress the Upper and Lower Fosters scheme to RIBA stage 3, (2) to discharge the costs associated with the submission of the planning application and (3) the securing of an acceptable permission for that scheme and the preparation of an Outline Business Case for subsequent approval by the Committee.**
- 3. That the committee approves the making of a Compulsory Purchase Order (“CPO”) under section 17 of the Housing Act 1985 and the Acquisition of Land Act 198, in respect of acquiring such pram sheds as are required to enable the development. The making of a CPO would be an option of last resort in the event that on-going negotiations and efforts to secure vacant possession proved unsuccessful.**
- 4. That the Committee delegates authority to the Deputy Chief Executive to instigate any required advertising and consultation procedures including for the possible appropriation of the land to include the consideration in consultation with the Chairman of the Committee of any representations received resultant on any advertising/consultation as may be required to comply with any statutory requirements and to authorise such applications for any statutory consents for the development of the Scheme, if required, to proceed with the formal appropriation and development of the land.**

### **1. WHY THIS REPORT IS NEEDED**

- 1.1** Upper and Lower Fosters estate in Hendon Ward occupies 3.06 hectares and contains 211 existing homes. There are 57 units in two low rise terraced blocks (Foster Court and Cheshir House) including sheltered housing, 88 units in two high rise point blocks (Upper Fosters) and 66 units in 5 low rise point blocks (Lower Fosters). 61 of the units are leaseholder owned, these units are spread across the blocks. There are several blocks of garages/stores on the estate, some of which are also leaseholder owned. A community hall (Cheshir Hall) is also located on the estate. The mid-20th Century estate design is of its time with much open space across the land parcel, making it suitable for new infill development to increase the supply of housing in the borough.
- 1.2** Re successfully secured £830k grant funding bid in March 2017 the balance of Capital was secured via P&R, the budget in the Capital Programme is £2.635m to planning. Following a competitive procurement process Allies & Morrison (A&M) were successfully appointed as lead Architects. Since this appointment, the community co-design process for this project

has defined what is being proposed. Residents' needs have been actively addressed by better community engagement and designing a scheme that is respectful of what is important to residents.

**1.3** The broad scope of Stage 1 was to undertake an options analysis. The main options considered under our long list were;

**Option 1** - minimum intervention – repairing the edges

**Option 2** - infill and adaptation - courtyards

**Option 3** - infill and adaptation - streets

**Option 4** - infill and adaptation - park

**Option 5** - complete redevelopment

**1.4** All the options that were discounted as impracticable were excluded at this stage benchmarked against the key Critical Success Factors (CSFs) for the Fosters Estate. These CSFs have been used alongside the investment objectives for the project to evaluate the long list of possible options.

**CSF1: community needs** – current and future community needs are met by the final preferred solution

**CSF2: strategic fit** – the final preferred solution contributes significantly to the London Plan, LBB Corporate Plan and LBB Housing Strategy targets

**CSF3: benefits optimisation** – the final preferred solution optimises the potential return on expenditure and improves the overall VFM by demonstrating the achievement of both qualitative and quantitative benefits

**CSF4: potential achievability** – the final preferred solution enables successful and timely achievement based on a community co-design approach

**CSF5: supply side capacity and capability** – the ability of the market to respond to the delivery of the final preferred solution is addressed at all stages of the project to mitigate any delivery risk

**CSF6: potential affordability** – the co-designed solution provided by the preferred option is sufficiently viable

**1.5** Emerging from the long list the following three options were further evaluated as part of a shortlist.

**Option 1** - minimum intervention – repairing the edges

**Option 2** - infill and adaptation – courtyards

**Option 4** - infill and adaptation – park

**1.6** The overall conclusion of the scoping options identified a preferred option supported by the residents, Option 4 as it addresses the issues with regards to the edges of the Fosters Estate and the parking issues identified during the community co-design process. This option has been further developed in stage 2 since February 2018 and comprises of c.199 units of which 50% will be affordable. The tenure split is broken down as follows.

- 75 Extra Care units of which 50 will be affordable
- 25 Private Extra Care

- 74 Open Market units
  - 49 affordable units
- 1.7** Stage 2 also looked at issues such as bulk, scale and massing and the generic appearance of a building within its surrounding urban context, resolving and encapsulating the principles of the scheme. The Council now wishes to develop the conceptual designs with a view of progressing and submitting a planning application in Spring 2019.
- 1.8** The proposal is to progress with RIBA stage 3 with input from a contractor (Pre-Construction Services) ensuring the level of development risk the Council takes is minimised by identifying early design issues and buildability.
- 1.9** Since May 2018 the Council has held several meetings with the GLA relating to Housing Capital funding, compliance with this process requires a resident ballot. The Council made its application in September 2018 and the GLA accepted the Council's application for exemption under clause 3 of section 8 of the Capital Funding Guide in October 2018. The level of grant funding to be allocated is still under consideration and will be known shortly.
- 1.10** A procurement strategy has been developed for this project and will run in parallel to Stage 3. Having considered a number of procurement routes the Council has agreed on a Competitive Procedure with negotiations on a single stage Design & Build using a JCT contract 2016 with amendments. The 'call off' of a contractor will be competitive tendered via an appropriate Framework. A further update will be presented in the Outline Business Case

### **Pram sheds and Encumbrances**

- 1.11** To support the proposed development on the Upper and Lower Fosters Estate, an assessment is required as to the impact of the physical layout on an estimated 118 pram sheds that currently exist on the site and rights of access having regard to the basis on which they are occupied as well as any other title matters relating to the Estate/Site of an estimated 118 Pram sheds that currently exist of the site. The Council has already engaged HB Law to undertake an initial review of rights of access and use of these Pram sheds and an initial title report has been commissioned which will be reviewed. This has in respect of the pramsheds it has been established that 61 leaseholders live within the proposed regeneration site and of these: -
- 32 leaseholder households have a pram shed/storeroom included within the demise of their lease
  - 18 have a right of use to a pram shed/storeroom
  - 11 have no rights of use
- 1.12** This assessment has allowed Barnet Council to establish that 50 leaseholders have a right of use to the pram sheds currently on site. However, the pram sheds will need to be surveyed to establish if they are being used and to identify which household (if any) is using each pram shed. The outcome of this review and any subsequent negotiations may require the Council to use its CPO powers as a last resort should private treaty negotiations fail.
- 2. REASONS FOR RECOMMENDATIONS**
- 2.1** The phased approach adopted by the Council has meant that approval is now required as the previous recommendation capped the Capital expenditure to £1.5m, the approved

spend is £2.635m. Approval is required to commit to the additional £1.135m of expenditure to develop the scheme to Planning.

- 2.2 Significant progress has been made to date with the Community Steering Group through the co design process, further delays could jeopardize the project due to a lack of momentum and interest from the community and supply chain.
- 2.3 The Councils grant funding application is under review and an additional £10,000 per home for Shared Ownership units is available if the project starts on site by March 2020.

### 3. **ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 The following options were considered and discounted during Stage one and are detailed in the Strategic Outline Case

#### **Do nothing:**

This would limit the council's ability to deliver the much-needed affordable housing and make use of the available land for infill development. It would also result in no improvement to current issues identified on the estate such as anti-social behaviour and fly-tipping, which require physical changes to be resolved long term.

#### **Option 1: minimum intervention**

This option was discounted because it did not satisfy the investment objectives and the Critical Success factors (CSFs). As a minimum, the masterplan needs to deliver the 75-home Extra Care facility and address the issues created by the edges around the site. As a minimum intervention, the site cleared by the demolition of Cheshir House would house the new Extra Care facility, with a limited number of additional homes created around the edges. However financially, architecturally and in line with the co-design feedback, this scope was considered unsatisfactory and not taken further.

#### **Option 2: infill and adaptation – courtyards**

This option satisfied some of the investment objectives and CSFs but fundamentally it did not deliver a strong solution for the edges of the Fosters Estate, including an adequate parking solution. This design option was based on the idea that infill buildings could be added to existing buildings to create a series of smaller courtyards within the estate, thereby reinforcing its character whilst creating a clearer distinction between public, communal and private open spaces. In this option, proposed building heights would range from 2-storey mews houses to 4-storey apartment blocks. Heights and block depths were determined by the adjacent existing homes.

#### **Option 3: infill and adaptation – streets**

This option was discounted because it did not satisfy the investment objectives and the CSFs. It is not a viable development option and does not maintain the much-valued character of the Fosters Estate. This design option investigated how the misalignment between streets and buildings creates in some places a unique sequence of buildings and open spaces. We based the design concept on this quality, and combined infill additions with existing buildings to repeat this elsewhere on the site. At the same time, the additional

buildings can restore a sense of street and open space hierarchy and solve some of the current issues on the site around the edges and the definitions of public, communal and private open space.

#### **Option 4: Complete Redevelopment**

This option offered the opportunity to restore the historic relationship between buildings and streets but was discounted as it did not meet the wider masterplan brief in terms of exploring the opportunity for extending / adapting existing blocks to form more coherent overall site layout and massing. It did not address the future needs of the estate, as identified as part of the community co-design approach. It resulted in a loss of estate through street-based development and therefore highly disruptive for local and neighboring residents. The complete redevelopment offers the opportunity to restore the historic relationship between buildings and streets that used to characterise the area prior to the estate being built. Based on the existing network of routes, a combination of regular perimeter blocks and rows of terraced houses could create an efficient and dense neighborhood around a centrally located open space. However, whilst it may be an appropriate proposition for some estates, the special character of Fosters Estate would be lost in such a scenario and a more sensitive "infill and addition" approach offers a large variety of design options to address current issues whilst retaining the site's unique and valued aspects.

#### **4. POST DECISION IMPLEMENTATION**

- 4.1** Should the Committee approve the Capital spend the Council will commission RIBA stage 3 (Design Development).
- 4.2** Procurement of a contractor to support the project will commence in line with the Council's Contract Procedure Rules. Timescales for procurement are currently being established.

#### **5. IMPLICATIONS OF DECISION**

##### **5.1 Corporate Priorities and Performance**

- 5.1.1** The Corporate Plan 2015-2020 has a strategic objective to "promote responsible growth, development and success across the Borough". It states that the Council working with local, regional and national partners, will strive to ensure that Barnet is a place of opportunity, where people can further their quality of life and where services are delivered efficiently to get value for money for the taxpayer. The proposed Barnet Development Pipeline project will help meet these objectives by providing good quality private and affordable lifetime homes, through a community co-design process that strengthens community relations and confidence in the Council.
- 5.1.2** The Growth Strategy for Barnet recognised that growth is vital for ensuring the future prosperity of the Borough, and maintain Barnet as a successful London suburb.
- 5.1.3** The Council's Local Plan adopted in 2012, sets out a 15 year 'vision' to help shape the kind of place that Barnet will be in the future. It supports the delivery of new homes including affordable dwellings and the use of brownfield land for high quality and sustainable suburban development.

5.1.4 The Council's Housing Strategy, agreed in 2015 has the overarching objective of providing housing choices that meet the needs and aspirations of Barnet residents and sets out how the Council will deal with a number of challenges including high prices, a shortage of affordable housing and the potential threats to the qualities that make the Borough attractive.

## **5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

5.2.1 The current capital programme includes a total budget provision and funding of £2.635m, this includes a £200k budget allocation from the Extra Care programme and supports the delivery of the Corporate Plan 2016-21, particularly the responsible approach to regeneration.

5.2.2 The Council has already committed c.£1.2m of which £830k was grant funding in developing a stage 2 design. Subsequent development phases will be costed and reported in the Outline Business Case taking account of the total development costs.

## **5.3 Social Value**

5.3.1 The procurement process and community involvement strategy for this project includes an assessment of social value as a key consideration. Tenderers will be required to demonstrate how they will work with the estate residents and local community to develop their proposals with the support of the project team, and the brief for the masterplan team will include the development of meanwhile projects, employment opportunities, and a detailed community strategy for the delivery phases of the project.

## **5.4 Legal and Constitutional References**

5.4.1 The Site is held by the Council for Part II Housing Act purposes in the Councils HRA. Any land appropriated to planning as comprised in the Site will automatically result in a transfer of that land from HRA to General Fund which will result in accounting consequences as the HRA will need to be repaid for the market value of the land appropriated.

5.4.2 Council Constitution Article 7.5 states that the remit of the Assets Regeneration and Growth Committee includes responsibility for regeneration strategy and oversight of major regeneration schemes, asset management, employment strategy business support and engagement.

5.4.3 The Council Constitution, Article 10 Table A states that Assets Regeneration and Growth Committee is responsible for authorising all accusations over 500K.

5.4.4 The Council has a range of powers including the general power of competence under Section 1 of Chapter 1 of the Localism Act 2011 to do anything that individuals can do subject to any specific restrictions contained in legislation and Section 111 of the Local Government Act 1972 which provides that a local authority has power to do anything which is calculated to facilitate, or is conducive or is incidental to, the discharge of its functions.

- 5.4.5 Where land is being and has been acquired or appropriated for planning purposes, pursuant to s122A of the Local Government Act 1972, the effect is that the land appropriated is cleansed of all third-party rights such as easements and covenants which has a beneficial effect for development purposes. However, the rights of those affected are commuted into compensation subject to a valid claim being made as provided for pursuant to sections 203 and 204 of the Housing and Planning Act 2016. The power of appropriation can now only be exercised on the same basis as for compulsory purchase.
- 5.4.6 Land held for the purposes of Part II of the Housing Act 1985 cannot be appropriated to planning purposes without the consent of the Secretary of State pursuant to s 19 of the Housing Act 1985 and thereafter cannot be disposed of at less than best without the consent of the Secretary of State.
- 5.4.7 The relevant areas of the Site affected by the development will need to be reviewed in terms of title matters and rights and reservations in the normal way and appropriate mitigation measures adopted.
- 5.4.8 to establish what rights over those areas may be affected to mitigate any claims against the Council by those leaseholders for actionable interference with their rights where the leases/occupational arrangements do not provide for the flexibility required.
- 5.4.9 Procurement of public works and services contracts over the relevant value thresholds must observe the requirements of the Public Contracts Regulations 2015, to include the placing of OJEU notices where such contracts are not drawn down from a compliant framework. The Public Services (Social Value) Act 2012 requires the Council to consider whether it can achieve an improvement to the economic, social and environmental well-being of an area as part of the procurement of these services. If so, the social value objectives identified must be written into the procurement process. All of this must be achieved with regard to value for money and in a way, that is compliant with existing public procurement law. "Social value" objectives can include the creation of employment, apprenticeship and training opportunities for local people, trading opportunities for local businesses and the third sector; and the promotion of equality and diversity through contract delivery.

## 5.5 Risk Management

- 5.5.1 The main business and service risks associated with the potential scope for this project are shown below, together with the actions to mitigate risk.

### Risks and counter measures

Main Risk	Actions to mitigate risk
<p><b>Programme</b></p> <ul style="list-style-type: none"> <li>• Political and Project Management</li> <li>• Reputation and financial</li> </ul>	<ul style="list-style-type: none"> <li>• Regular engagement on a co-design basis with residents in tandem with consultant team design, costing and viability exercises</li> <li>• Programme and cost impact to be monitored if programme extends</li> </ul>

<b>Legal review</b> <ul style="list-style-type: none"> <li>Project management and financial</li> </ul>	<ul style="list-style-type: none"> <li>Review existing site/title documentation to ensure appropriate and up to date</li> </ul>
<ul style="list-style-type: none"> <li>Project management and legal</li> <li>Compliance</li> <li>Project management</li> </ul>	<ul style="list-style-type: none"> <li>Appoint an approved inspector consultant to support team in achieving building control compliance</li> <li>Co-design process engages with existing residents over masterplan design</li> <li>Preferred masterplan to mitigate any site security concerns</li> <li>Monitoring ongoing</li> <li>Neighbouring owners consulted where appropriate</li> </ul>
<ul style="list-style-type: none"> <li>Neighbourly matters</li> <li>Financial and project management</li> <li>Financial</li> </ul>	<ul style="list-style-type: none"> <li>Appoint Party Wall consultant to review and manage as required</li> <li>Appoint Rights of Light consultant to review and manage as required</li> <li>Design team to work within Daylight and Sunlight guidance parameters</li> </ul>
<b>Surveys</b> <ul style="list-style-type: none"> <li>Financial and project management</li> <li>Financial</li> </ul>	<ul style="list-style-type: none"> <li>All survey requirements and gaps addressed</li> <li>Commission of further surveys to assist with reliable baseline</li> <li>Early engagement with utility providers</li> </ul>
<b>Design</b> <ul style="list-style-type: none"> <li>Business continuity</li> <li>Financial</li> <li>Compliance</li> <li>Financial and project management</li> </ul>	<ul style="list-style-type: none"> <li>Scheme to be considered in phases to minimise utility disruptions</li> <li>Undertake contamination tests</li> <li>Undertake ecology / acoustic / Tree Preservation Order and associated environmental assessments</li> <li>Pre-development enquiry submitted at early stage of project</li> </ul>
<b>Cost &amp; Viability</b> <ul style="list-style-type: none"> <li>Financial</li> </ul>	<ul style="list-style-type: none"> <li>Control by design</li> <li>Viability requirements established</li> <li>Grant Funding Application &amp; discussions with GLA</li> </ul>
<b>Planning</b> <ul style="list-style-type: none"> <li>Political</li> <li>Reputational</li> <li>Programme</li> </ul>	<ul style="list-style-type: none"> <li>Interrogate through pre-application discussions and find comparable schemes</li> <li>Continue public engagement</li> </ul>
<b>Sales and marketing</b> <ul style="list-style-type: none"> <li>Financial</li> </ul>	<ul style="list-style-type: none"> <li>Monitor market conditions</li> <li>Undertake reviews of pricing</li> <li>Monitor increase in local / mayoral CIL and build costs</li> </ul>
<b>Main Risk</b>	<b>Actions to mitigate risk</b>
<b>CDM</b>	<ul style="list-style-type: none"> <li>Design team to discuss access and maintenance strategies as design develops</li> <li>Details of all overhead and below ground services to be established fully</li> <li>Establish existing site information</li> </ul>
Co-design and community engagement	<ul style="list-style-type: none"> <li>Continue to actively manage process through co-design</li> </ul>

<ul style="list-style-type: none"> <li>• Political and reputational</li> <li>• Financial and project management</li> <li>• Programme management and financial</li> <li>• Reputational, cost and programme</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure that financial appraisals continue on an iterative basis throughout design process</li> <li>• Continually keep programme under review</li> <li>• Ensure co-design process looks ahead to potential flashpoint issues and builds capacity in community to understand and consider</li> <li>• Ensure continuous feedback from community members</li> <li>• Ensure accurate costs and viability modelling</li> <li>• Ensure phasing and construction impacts are considered during all design stages</li> </ul>
Transport and highways	<ul style="list-style-type: none"> <li>• Ascertain if site will be referred at earliest opportunity</li> </ul>
Future construction <ul style="list-style-type: none"> <li>• Financial and project management</li> <li>• Political</li> </ul>	<ul style="list-style-type: none"> <li>• Continually monitor project needs, programme and co- design feedback</li> </ul>

## 5.6 Equalities and Diversity

- 5.6.1 Under the Equality Act 2010, the Council must have due regard to the need to: a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; b) advance equality of opportunity between those with a protected characteristic and those without; c) promote good relations between those with a protected characteristic and those without. The 'protected characteristics' referred to are; age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. It also covers marriage and civil partnership with regards to eliminating discrimination.
- 5.6.2 The Council is committed to improving the quality of life for all, and wider participation in the economic, educational, cultural, social, and community life in the Borough.
- 5.6.3 The development at Upper and Lower Fosters will make a significant contribution to the provision of additional high quality intermediate housing in the Borough to assist first time buyers, many of whom are currently priced out of the market. In addition, much needed affordable rented housing will also be provided, as well as promotion of further construction jobs in the borough.
- 5.6.4 At this stage, the proposal does not raise any issues under the Council's Equalities Policy and does not have a bearing on the Council's ability to demonstrate that it has paid due regard to equalities as required by the legislation. No immediate equality impacts are anticipated because of this proposal; however, a full EIA will be considered in due course.

## 5.7 Corporate Parenting

- 5.7.1 None in the context of this report

## 5.8 Consultation and Engagement

- 5.8.1 Barnet Council has adopted a community engagement and co-design strategy for this project, which encourages residents to play a full role in developing the improvement proposals from design through to post-delivery.

5.8.2 Re and Barnet Homes understand that to simply 'consult' with communities experiencing regeneration is inadequate. There must be genuine, meaningful involvement that secures relationships built on trust and clear communication channels that can address issues as they arise and mitigate potential 'flashpoints'. A co-design process has been adopted for this project, led by a community engagement specialist, and community involvement has been integrated into every stage of the project development, including the procurement of the design team. A stakeholder engagement plan has been developed and approved and monitored by the project board.

5.8.3 The site is situated in an area with a strong Jewish community presence as part of a wide mix of religious and ethnic groups. The wider community is involved in the project through representation in the co-design process as well as through community open events.

## **5.9 Insight**

5.9.1 No specific insight data has been used in this report.

## **6. BACKGROUND PAPERS**

6.1 <https://barnet.moderngov.co.uk/documents/s36542/Upper%20and%20Lower%20Fosters.pdf>