



## Cabinet

<b>Title</b>	Authorisation to procure a developer-contractor for the delivery of the Small Sites Modular Programme through an appropriate framework on the basis of a direct award in accordance with framework procedures
<b>Date of meeting</b>	14 May 2024
<b>Report of</b>	Councillor Barry Rawlings – Leader of the Council and Cabinet Member for Resources and Effective Council Councillor Ross Houston – Deputy Leader and Cabinet Member for Homes and Regeneration
<b>Wards</b>	East Barnet, West Hendon and Whetstone
<b>Status</b>	Public
<b>Key</b>	Key
<b>Urgent</b>	No
<b>Appendices</b>	None
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## Summary

### Background

The Small Sites Modular Programme was approved by the Housing and Growth Committee in November 2021.

Since November 2021, the programme has been subject to some unique factors that have impacted the implementation of the programme, these include:

- Global Pandemic and financial impact on funding resulting in the developer-contractor no longer being able to secure project finance. Therefore, the Council explored alternative finance options which delayed the timeline for the delivery of the programme.
- Unprecedented construction cost inflation increases above estimated levels affecting the viability causing a delay in the delivery of the programme.

The Council had considered procuring a developer-contractor by entering into a short-term lease at a peppercorn rent on the sites to enable them to deliver the new homes. The legal advice received on this procurement route concluded that there was significant procurement risk and was therefore discounted by the Council. Alternative procurement routes have been revisited in conjunction with the legal team, including suitable framework agreements, for the procurement of a developer-contractor.

This opportunity contributes towards the Council's affordable housing targets as outlined in the Borough's corporate plan, while also developing more difficult small sites. The sites at former East Barnet Library, former Nightingale Nursery, Whetstone Close and Reets Farm Close comprise a programme which will deliver 40 new homes to be held in the Council's Housing Revenue Account (HRA). It is proposed that all homes will be rented at social rent levels with Council secure tenancies and delivered to passivhaus standard (a voluntary standard for energy efficiency in buildings that reduces the buildings ecological footprint. It results in ultra-low energy buildings that require little energy for space heating or cooling).

A capital bid (General Fund and HRA) funded by a mix of PWLB borrowing and GLA grant, was completed in September 2023. Formal approval of the allocation of funds was part of the 2024/25 budget presented to Council on the 27<sup>th</sup> of February 2024. A grant application to the Greater London Authority (GLA) was approved in January 2024. The funding required has therefore been secured to deliver the new homes.

### **Requirement**

To deliver the programme it is necessary to procure a developer-contractor on a 'turnkey' basis using modern method of construction.

### **Decision**

The Cabinet decision sought is to authorise the procurement of a developer-contractor to deliver the Small Site Modular Programme through an appropriate framework agreement on the basis of a direct award in accordance with framework procedures.

The recommendation is to appoint a contractor by 31 May 2024. The contract length is to be 3 years to allow the developer-contractor to obtain planning permission and build the new homes.

## **Recommendations**

- 1. That Cabinet approve the authorisation to procure a developer - contractor in accordance with the Council's Contract Procedure Rules.**
- 2. That Cabinet delegates the authority to appoint a developer-contractor, subject to the completion of the procurement process, to the Deputy Chief Executive in consultation with the Cabinet Member for Homes and Regeneration.**
- 3. To delegate authority to the Deputy Chief Executive to sign any Access Agreement as required by a framework provider and make the necessary arrangements to allow the Council to access a selected Framework Agreement as required.**

**4. To delegate authority to the Deputy Chief Executive to agree the terms of and enter into all further documents that are required for the appointment of the developer-contractor.**

### **1. Reasons for the Recommendations**

1.1 To deliver an increased number of homes completed this requires the Council and the wider public sector to increase its own pipeline of housing delivery. To that end, the Council has reviewed its assets to consider all suitable sites for redevelopment potential. With a third of the borough in designated green belt, the Council has to be innovative in how new homes can be built in the borough. The Corporate Plan, Barnet 2023-26, includes several key priorities that the development of the sites will contribute towards, including, ensuring decent quality housing, investing in communities, and delivering the right homes which people can afford.

1.2 Barnet is the second most populated borough in London, with over 389,300 residents. The population is expected to grow to over 451,000 by 2041, placing further pressure on housing within the borough. The Housing Strategy 2023-28 states there is currently not enough suitable housing in Barnet for everyone to have a safe, secure, and affordable home. Barnet have committed to delivering 1,000 new council homes to be let at 50% or less of the average market rent.

1.3 Delivering more affordable homes will support the growing housing need in the borough.

1.4 Small sites (under 0.25 ha) are delivering a third of new homes in Barnet.

The proposed 40 new homes proposed under the Small Sites Modular Programme will contribute to these targets and requirements.

### **2. Alternative Options Considered and Not Recommended**

2.1 Not to re-procure. Failure to appoint a developer-contractor will reduce the capability of the Council to delivery new social rented homes.

2.2 Consideration was given to completing a non-urgent procurement exercise but due to the need to enter a contract by June 2024 to satisfy current GLA grant requirements this was not considered as being achievable.

2.3 Consideration was given to entering a short-term lease with a developer-contractor at a peppercorn rent on the sites to enable them to deliver the new homes. Upon practical completion the leases will collapse, and unencumbered freehold title would then have reverted to the Council. However, the legal advice received on the structure of the agreement was that it would likely to incorporate significant procurement risk and was therefore discounted.

### **3. Post Decision Implementation**

3.1 Source a suitable framework including signing the necessary forms and Access Agreement to access the identified Framework Agreement. Liaise with the Framework Manager as required and ensure that the selection process is carried out in accordance with the Council Procedure Rules.

3.2 Enter into a development agreement with a developer-contractor for the delivery of new homes at the sites at East Barnet Library, Nightingale Nursery, Whetstone Close and Reets Farm Close.

- 3.3 Prepare and submit planning applications for the sites at former East Barnet Library, former Nightingale Nursery, Whetstone Close and Reets Farm Close.
- 3.4 Satisfying the conditions precedent in the development agreement prior to site mobilisation.

#### **4. Corporate Priorities, Performance and Other Considerations**

##### **Corporate Priorities**

- 4.1 The Council's Corporate Plan 2023-26 sets out the aim to ensure Barnet puts caring for People, our Places and the Planet at the heart of everything we do.
- 4.2 Caring for People – The Small Sites Programme will deliver new affordable residential homes which will allow residents to remain within their local community.
- 4.3 Caring for our Places – We want to create a desirable place to live, we are delivering contemporary, state of the art sustainable affordable homes. We have sought to provide a mix of accommodation for a variety of occupiers.
- 4.4 Caring for the Planet - sustainability at the heart of everything we do – becoming a net zero Council by 2030. We will work with local people, communities and businesses across the borough to make Barnet net zero by 2042. We will work to create a place fit for the future, where everyone benefits from improved green infrastructure, green employment and business opportunities.
- 4.5 Delivering the right homes to meet diverse needs now and for future generations, that people can afford and are in the right places, is a key priority and challenge for the Council.
- 4.6 The Corporate Plan further sets out how the Council will deliver these ambitions within financial constraints by making efficient use of money and working more closely with partners in order to deliver for the residents of Barnet.
- 4.7 The 2021 London Plan and draft Local Plan recognise the need to deliver more housing in the borough. The Council's Housing Strategy 2023-2028 continues to emphasise that delivering more homes that people can afford is a key priority 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.
- 4.8 Barnet's Joint Health and Wellbeing Strategy 2021-25 recognises the importance of access to good quality housing in maintaining Well-Being in the Community.
- 4.9 Lack of affordable housing is highlighted in Barnet's Joint Strategic Needs Assessment (JSNA) as one of the top five concerns identified by local residents in the latest Residents' Perception Survey.

##### **Sustainability**

- 4.10 In May 2022, Barnet declared a Climate and Biodiversity Emergency. Barnet is committed to becoming a Net Zero council by 2030 and a place no later than 2042.
- 4.11 In January 2023, the borough launched its BarNET ZERO campaign, which seeks to bring communities, residents, and businesses together to achieve this goal.
- 4.12 The new homes will be delivered using offsite modern methods of construction which provide:
- Premanufactured Value (PMV) of more than 60% meaning over half the construction takes place off site.
  - Increased energy performance with an EPC Rating A as a minimum.

- Net Zero carbon with a fabric first design with air source heat pumps and solar photovoltaic panels. The homes achieve net zero carbon emissions for all regulated, operational energy.

4.13 The new homes ultimately achieve the same overall performance as Passivhaus standard.

#### **Corporate Parenting**

4.14 The nursery facility at the former Nightingale Nursery site has been closed for a number of years and it is not considered that this decision will have a direct impact on looked after children. The increased availability of high-quality affordable housing will have an indirect positive benefit and a reduction in temporary accommodation.

#### **Risk Management**

4.15 A key benefit of the transactional structure of this project is the transfer of development risk away from the Council to the developer-contractor.

#### **Insight**

4.16 The procurement exercise will be completed in line with the Council's standard procurement procedures.

#### **Social Value**

4.17 Increasing the value of existing assets through the development on underutilised or redundant land towards supporting local housing needs by helping to provide new opportunities for housing, in particular, affordable housing.

4.18 Any contractors or parties involved in the development will be encouraged to provide opportunities for employment, training and apprenticeships for local people and use local suppliers where appropriate.

### **5. Resource Implications (Finance and Value for Money, Procurement, Staffing, IT and Property)**

#### **5.1 Finance**

A capital bid for the full small sites programme (General Fund and HRA) has been completed, funded by a mix of PWLB borrowing and GLA grant. The formal approval of the allocation was part of the 2024/25 budget approved by Council on the 27<sup>th</sup> of February 2024.

#### **5.2 Value for Money**

5.2.1 The delivery of the development will secure new affordable housing to address need within the borough which will reduce the increasing dependence on temporary accommodation and will secure substantial opportunity to meet strategic housing objectives.

#### **5.3 Procurement**

5.3.1 To deliver the Small Site Modular programme it is necessary to procure a developer-contractor to deliver the new homes to the Council on a 'turnkey' basis using modern method of construction. Procurement will be conducted in accordance with Contract Procedure Rules.

#### **5.4 Staffing, IT and Property**

5.4.1 There are not considered to be any staffing or IT issues arising from this transaction.

5.4.2 Brings forward development on underutilised or redundant land held by the Council.

## **6. Legal Implications and Constitution References**

6.1 Council Constitution Part 2D sets out the terms of reference of Cabinet which includes the following responsibilities:

- Management of the Council's Capital Programme.

6.2 The Council, as a public body, is subject to the Public Contract Regulations 2015 (PCRs), when procuring for works such as those mentioned in this report. Regulation 33 of the PCRs provide that eligible public sector organisations are entitled to award and access contracts based on Framework Agreements, on the provision that they follow the access and selection rules set out in the relevant Framework Agreement.

6.3 Part 4B (Contract Procedure Rules), Rule 5.4 of the Council's Constitution provides that, where the Council intends to access an existing Framework Agreement, due diligence checks must be carried out to demonstrate that the Council can lawfully access the Framework Agreement and that it is fit for purpose and provides value for money. There will be continued engagement with the Procurement Team, to ensure that any procurement strategy and implementation is carried out in accordance with the PCRs and the Council's Constitution.

6.4 Part 2D of the Constitution details the functions that Cabinet is responsible for all key decisions, namely decisions involving expenditure or savings of an amount in excess of £1m for capital expenditure or £500,000 for revenue expenditure or, where expenditure or savings are less than the amounts specified above, they constitute more than 50% of the budget attributable to the Service in question. Although the signing of any Access Agreement and Energy Performance Contract (or similar) may not constitute a commitment to spend, the acceptance of subsequent works contracts under the Framework Agreement may be subject to further Cabinet approval once the Service has identified and intends to proceed with a programme of works in excess of the above values.

## **7. Consultation**

7.1 A detailed briefing session was held with East Barnet Ward Members on the 17 November 2023 on Nightingale Nursery but included a broader presentation on the Small Sites Modular Programme.

7.2 On the exchange of contracts with the Council, the developer-contractor will be engaging with the local community in preparation to submitting planning applications for the sites.

## **8. Equalities and Diversity**

8.1 The 2010 Equality Act outlines the provisions of the Public-Sector Equalities Duty which requires Public Bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advance equality of opportunity between people from different groups and foster good relations between people from different groups.

8.2 The proposals in this report are not considered at this stage to raise any negative impacts for equalities and demonstrate that the Council has paid due regard to equalities as required by section 149 of the Equality Act 2010.

## 9. Background Papers

- 9.1 Housing & Growth Committee, 16 November 2021, Small Sites Modular Programme: [Committee Report \(moderngov.co.uk\)](https://www.moderngov.co.uk/committees/housing-and-growth-committee/committees-reports/2021-22/16-november-2021-small-sites-modular-programme-committee-report)