

## LONDON BOROUGH OF HAMMERSMITH & FULHAM

**Report to:** Cabinet

**Date:** 15/05/2023

**Subject:** Lillie Road – New Council development

**Report of:** Councillor Andrew Jones, Cabinet Member for the Economy

**Report author:** Matt Rumble, Strategic Head of Regeneration and Development

**Responsible Director:** Jon Pickstone, Strategic Director for the Economy

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### SUMMARY

This report concerns the proposed development of the site known as 70/80 Lillie Road, the (“**Site**”) shown edged red on the plan at appendix 6. The report seeks approval for a capital budget, the procurement strategy for the principal construction contractor and the appropriation of the Site for planning purposes for its redevelopment.

The proposed scheme, in respect of which a planning application has been submitted and allocated reference number 2023/00087/FR3 (“**Development**”), co-produced with local residents and delivered by the council, will see the redevelopment of the Site, which currently includes the West Kensington Tenants & Residents (TRA) Hall and a disused former Nursery. The development will provide 42 new homes, 21 (50%) affordable, and a replacement TRA Hall.

The sustainability of the scheme has been maximised; designed to be built to Passivhaus certified standards, reducing onsite carbon emissions by 71% and delivering substantial energy savings to new residents. A planning application for the proposed scheme was submitted in January 2023. The Lillie Road project is self-funded which will support the long-term financial health of the Housing Revenue Account, without putting pressure on other council budgets.

The council’s ambition is to maximise affordable housing across its development programme therefore, subject to planning, will look to convert the market homes in this scheme to affordable through the use of subsidy such as section 106 funding.

Alongside this, the council will develop an innovative model of intermediate affordable housing, aligned to its wider Industrial Strategy objectives of placemaking, inclusion and economic growth. Intermediate affordable homes will be prioritised for key workers on a range of incomes; to support young, growing families on lower incomes; and growth employment sectors of science and innovation.

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## RECOMMENDATIONS

That Cabinet:

1. Notes that Appendix 1 is not for publication on the basis that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) as set out in paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended).
2. Approves a total Development capital budget, including contingencies, of £25,218,839 of which £1,802,000 has already been approved, to deliver the proposed new homes and to be funded through a combination of HRA borrowing, Right to Buy receipts and capital receipts from private sales as set out in exempt Appendix 1.
3. Authorises the Strategic Head of Regeneration and Development to take decisions on expenditure against this contingency budget subject to the continued viability of the development.
4. Approves the Procurement Strategy, as set out in Appendix 2, to procure a principal construction contractor, using a JCT standard form of building contract, on a design and build basis via the open Find a Tender Service (FTS) procurement route.
5. Delegates authority to the Strategic Director for the Economy, in consultation with the Assistant Director of Legal Services to carry out the appropriate procedural steps to identify all rights affected and consider whether the area shown shaded yellow on the plan at Appendix 5 is no longer required for the current purpose for which it is held as specified in paragraphs 3 of the 'Detailed Analysis' section of this report.
6. Delegates authority to the Strategic Director for the Economy, in consultation with the Assistant Director of Legal Services to appropriate that part of the Site shaded yellow for planning purposes pursuant to section 122 of the Local Government Act 1972 as it will facilitate the carrying out of redevelopment of the Site pursuant to section 226(1)(a) of the Town and Country Planning Act 1990) on being satisfied that the specified area is surplus and is no longer necessary for the current purpose for which it is held .
7. Delegates authority to the Strategic Director for the Economy, in consultation with the Assistant Director of Legal Services to carry out the appropriate procedural steps to identify all rights affected and consider whether the area shown shaded pink and edged blue on the plan at Appendix 5 is no longer required for the purposes for which it is currently held as specified in paragraph 3 of the 'Detailed Analysis' section of this report.
8. Delegates authority to the Strategic Director for the Economy, in consultation with the Assistant Director of Legal Services to appropriate that part of the Site shaded blue for planning purposes pursuant to section 122 of the Local Government Act 1972 as it will facilitate the carrying out of redevelopment in relation of the Site pursuant to section 226(1)(a) of the Town and Country

Planning Act 1990) on being satisfied that the part of the Site shaded blue is no longer necessary for the current purpose for which it is held.

9. Delegates authority to the Strategic Director for the Economy, in consultation with the Assistant Director, Legal Services to take any necessary steps to resolve matters arising from the grant of planning permission, including the authority to enter into any associated legal agreements arising from the delivery of the development and enabling deeds and agreements with statutory utility providers, housing associations and third parties including the surrender and re-grant of a lease on existing sub-station, highways agreements, apply for the stopping up or diversion of footpaths necessary to enable the Development to be carried out pursuant to section 257 of the Town and Country Planning Act 1990 and consider and decide any necessary appropriation to expedite and secure the best use of the land.
  
10. Delegates authority to the Strategic Director for the Economy, in consultation with the Assistant Director of Legal Services, to carry out such steps as are necessary to effect the appropriation and to deal with the necessary arrangements to record the appropriation of the Site for planning purposes pursuant to section 122 of the Local Government Act 1972 including the transfer of the land shaded yellow on the plan attached at Appendix 5 from the Housing Revenue Account (HRA) to the General Fund account (GF); to negotiate and enter into agreements by deed and payment of compensation for the release of third-party rights where this can be achieved on reasonable terms within a reasonable timescale; and the subsequent use of powers under Section 203 of the Housing and Planning Act 2016 in order to authorise any interference with easements, covenants and other rights in respect of the Site including authorisation to take all necessary steps required in relation to any associated claims, settlements relating to compensation under section 204 of the Housing and Planning Act 2016 and other legal agreements so as to enable the Development of the Site.
  
11. Delegates authority to the Strategic Director for the Economy, in consultation with the Assistant Director of Legal Services to note the responses to consultations undertaken by the Council in relation to the Development to carry out such further consultation as is appropriate and to take all such action as is appropriate to deal with any notice served in relation to the Site to facilitate the Development.

**Wards Affected:** West Kensington

Our Values	Summary of how this report aligns to the H&F Values
Building shared prosperity	The Development of the Site would bring about measurable local benefits, including realisable benefits during the construction stage where contractors, under the council's procurement policy, will be incentivised to provide Social Value that is aligned to the

	council's strategies such as the Industrial Strategy.
Creating a compassionate council	The Development would also help to meet the acute need for affordable housing in the locality as well as the wider borough with the provision of 21 affordable homes. The council will also explore the possibility of converting the market homes to affordable homes subject to Planning permission being secured.
Doing things with residents, not to them	The scheme involves extensive engagement with the local community at all stages. The construction contractor would be required to work in accordance with council's values of doing things with residents, not to them, throughout all Development stages.
Being ruthlessly financially efficient	Selection of the construction contractor through a robust procurement process would ensure that the project has the best possible chance to deliver high-quality residential homes that are operationally net-zero carbon through the use of external funding and incorporation of private sale homes, demonstrating the ruthless financial efficiency of the development while maximising the number and sizes of affordable homes.
Taking pride in H&F	The aim of the Development is to create a lasting and positive legacy through well-designed architecture and amenities while meeting both the climate challenge and the acute need for affordable housing in the borough.
Rising to the challenge of the climate and ecological emergency	The Development would deliver highly sustainable homes that achieve high levels of energy efficiency and are fossil-fuel free, and so help create and sustain a low carbon community. The brief to the construction contractor will be to meet the targets set out in the emerging Climate Strategy with the aim to achieve a significant reduction in operational carbon usage, thereby reducing the fuel bills of future residents.

## Financial Impact

The total development budget and its funding resources are set out in exempt Appendix 1.

In November 2020 Cabinet approved a capital budget of £1,802,000 in the General Fund (GF) to facilitate the redevelopment of the Lillie Road Site to the planning and procurement stages. This report seeks an approval of further £23,416,839 to deliver proposed new homes.

The report also approved a recommendation for the site to be appropriated to the Housing Revenue Account (HRA) subject to securing external valuations and approval of the Head of Asset Strategy and Portfolio (Borough Valuer) and to delegate authority to the Director of Finance in consultation with the Head of Asset Strategy and Portfolio (Borough Valuer) and the Cabinet Member of Finance and Commercial Services to take the necessary steps, including securing external valuation of the sites in order to facilitate appropriations and consequently, re-assign the development budget and spend to the HRA from the General Fund.

### Development proposal

The total forecast scheme costs represent a significant capital investment in the HRA of **£25,218,839** (including £1,802,000 already approved) and costs will need to be tightly managed within this envelope.

### Right to Buy (RtB) ringfence funding

The current proposal assumes a pre 2017/18 Right-to-Buy receipts contribution of £3,334,855, some of which has already been received. However, this funding is subject to Right to Buy 1-4-1 receipts retention conditions set out by the Department for Levelling Up, Housing and Communities (DLUHC) and therefore failure to meet these conditions might result in loss of the receipts and further borrowing potentially being required to bridge the funding gap if no other alternative financing is identified.

### Costs of disposal

In the General Fund, up to 4% of the expected future receipts can be used towards the costs of disposal (legal and marketing fees directly related to private sale of units). There is no cap for the HRA but a costs of disposal budget of £403,375 is included within the overall additional budget request.

### Other risks and mitigation

The Housing Revenue Account (HRA) financial plan agreed by Cabinet on 7 February 2022 set out the significant financial pressures and annual deficit of the HRA requiring the delivery of £3.8m of savings in 2022/23 rising to £8m by 2025/26. The financial plan modelled in the costs, financing and income expected from affordable housing development schemes, including the Development, and illustrated the importance of new developments and the resulting rental income to the financial sustainability of the HRA.

Due to the wider economic context and increases in inflation, there is a risk that the tenders received for the build contract will be higher than what is currently assumed in the financial appraisal and financial plan. This will potentially put added pressure on the HRA to finance increased capital costs. Given current economic volatility, there is also uncertainty regarding the future level of receipts achievable from the planned asset sales. Where this is the case, this will need to be mitigated as far as possible through value engineering.

The financial appraisal assumes that the Council will be able to borrow at an interest rate of 2.4% in the long term. Due to recent increases, and the potential for further

increases should inflation become entrenched within the wider economy, this needs to be monitored closely, as an increase in the interest rate would impact on the potential future financial benefits of the scheme and add further pressure to the HRA. A fuller outline of financial risks is set out in the exempt Appendix 1.

If the scheme is no longer considered viable and the decision is taken for the development not to proceed, any works completed would be abortive and capital spend incurred up to that point would need to be written off to revenue. Also, if the forecast intermediate housing and Private Sale receipts do not materialise, any costs of disposal incurred to date would also be written off to revenue as these costs can only be funded by capital receipts.

The two main external factors that can influence a schemes viability is construction costs, and Open Market Values (OMV). Other financial assumptions and considerations will be monitored and reviewed but have less of an impact as these primary inputs.

As part of the Council's development process and strategic risk management, officers have set up a governance process with Gateway Reviews to allow review and facilitate decisions to be made at the appropriate 'milestone' stage of a typical schemes journey.

To complement this risk mitigation operationally, officers undertake timely and regular reviews and proactively reconcile the emerging schemes costs and values to support or reflect a scheme's design development journey or options being considered etc. These primary inputs in turn, are established by commissioning updated professional advice regarding latest construction and tender costs, and, using RICS Red Book methodology when capturing 'comparable' market values etc. – to inform a reconciled viability – and again help reduce risk exposure even further and continually understand the 'status' of the project with regards to its latest financial performance – so intervention can be managed if required.

### VAT implications

There are no adverse VAT implications relating to construction of social housing nor to sales of private homes on a long leasehold with a minimum term of 125 years. The contractor should apply a zero-rate of VAT to construction of new dwellings.

*Finance implications completed by Ariana Murdock, Finance Manager (Strategic Capital), 10 January 2023*

*VAT implications completed by Joanna Monaghan, Principal Accountant (Taxation), January 2023*

*Verified by: Sukvinder Kalsi, Director of Finance, 28 April 2023*

### **Legal Implications**

The Council has the power under section 122 of the Local Government Act 1972 to appropriate land which is within the Council's ownership that is no longer required for the purpose for which it was held immediately before the appropriation, provided that the new purpose is one for which the Council would be authorised to 'acquire' land by agreement.

Section 226 of the Town and Country Planning Act 1990 (TCPA 1990) authorises a local authority to acquire compulsorily any land in their area for planning purposes. This acquisition can take place in one of the following two circumstances if the local authority thinks:

- a) the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land (section 226(1)(a), TCPA 1990); or;
- b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated (section 226(1)(b), TCPA 1990);

But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects—

- 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 (section 226(1) (1A), TCPA 1990)

However, in reaching this decision to appropriate the Council must consider the public need within the area for the existing use. Historically the Site has been held partly under the General Fund and partly under Housing and Revenue Account.

Appropriation requires more than a mere decision to hold land for a different purpose. An authority cannot properly appropriate land planning purposes unless it considers that the resulting interference with third-party rights is necessary.

Appropriation is akin to a compulsory purchase, so the same degree of necessity applies. Article 1 of the First Protocol to the Human Rights Act 1998 also requires an authority to consider whether the new purpose justifies interference with the rights affected. Therefore, a local authority cannot properly appropriate land to planning purposes unless it considers that it has good reason to interfere with third party rights, which would be overridden by sections 203 - 205 of the Housing and Planning Act 2016.

There is no statutory requirement to advertise or consult on a proposal or decision to appropriate land under the general power contained in section 122 of the LGA 1972, unless the appropriation relates to 'special categories' of land, as referred to again further on in this report. It is important, however, that the Council adopts a "conscious deliberative process" to the appropriation of land, to ensure that the statutory powers under which the land was held and the appropriation made is clear at all times.

The building and land within that part of the Site shaded yellow on the plan is held in the Housing and Revenue Account as a Tenants and Residents Hall for the use of the residents of the West Kensington Estate. It has been underused since 2020 following its temporary closure during the Covid pandemic and a new tenants' hall is being provided as part of the Development.

That part of the Site shaded pink and edged blue is surplus land held in the General Fund following the termination in November 2019 of the Conditional Sale Agreement completed in 2012 to facilitate the Earls Court Regeneration

Recommendations 5 to 8 seeks delegated authority for the named officers to take a view whether the Site is no longer required for the purpose for which it is held for the reasons set out in paragraphs 3 and 10 of the 'Detailed Analysis' section of this report and on being satisfied that it is no longer required to appropriate it, for a planning purpose to facilitate the carrying out of development, redevelopment or improvement on the Site pursuant to section 226(1)(a) of the Town and Country Planning Act 1990) which contributes to achieving the promotion or improvement of the economic, social or environmental well-being of the Site as set out in paragraphs 11 to 17 of the 'Detailed Analysis' section of this report ,subject to the appropriate procedural steps being carried out and consideration given to third-party rights under delegated powers.

Recommendation 9 seeks authority to take steps to resolve ancillary matters including those arising from the grant of planning permission for the development including but not limited to stopping up or diverting existing public rights of way pursuant to section 257 of the Town and Country Planning Act 1990. Section 257 of the Town and Country Planning Act enables the Council by order to authorise the stopping up or diversion of any footpath if it is satisfied it is necessary to do so in order to enable development for which planning permission has been granted, to be carried out. This recommendation also includes authorisation to consider and decide to appropriate land which is surplus to requirements. This also enables the delivery of highway infrastructure or otherwise facilitate the redevelopment as well as including the power to enter into legal agreements including leases.

Recommendation 10 seeks authority for the Strategic Director for the Economy, in consultation with the Assist Director of Legal Services , to consider and decide to take such steps as are necessary to record the appropriation of the Site for planning purposes pursuant to 122 of the Local Government Act 1972 as the Site is no longer required for the purpose for which it is currently held including the transfer of that part of the Site shown shaded yellow on the plan from the Housing Revenue Account to the General Fund account, and for the Council to engage its powers under Section 203 of the Housing and Planning Act 2016 in this case by way of officer delegation subject to compliance with the statutory tests and if necessary, override any easements or interests in the Site which has been appropriated for planning purposes. This will be subject to the payment of any necessary compensation. Prior to any delegated decision being taken officers have a legal duty to prepare and consider an Equality Impact Assessment and address Human Rights impacts of those persons who are affected. The legal process has been addressed in Appendix 2 of this report.

Engaging section 203 of the Housing and Planning Act 2016 (HPA 2016) allows the Council to override private third-party rights, subject to payment of compensation under section 204 of the HPA 2016, provided certain other conditions are met. The application of section 203 of the HPA 2016 is subject to the following additional conditions:



- Planning permission must have been obtained for the building and/or use of the land that causes the infringement of third-party rights. Such permission has been granted.
- The Council could (at least in principle) acquire the land compulsorily for the relevant building work and/or use. The Council has such power under section 226 of the T&CPA 1990.
- The building work and/or use is for purposes related to the purposes for which the land was appropriated. It is clear that the development of the Site is related to the purposes of the appropriation recommended in this report.

The types of rights that can be overridden under section 203 comprise;

- a) a “relevant right or interest” i.e., “any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land (including any natural right to support)”, and
- b) a restriction as to the user of land arising by virtue of a contract.

Under section 19(2) Housing Act 1985, a local housing authority holding land for the purposes of Part II of the Housing Act 1985, shall not, without the consent of the Secretary of State, appropriate any part of the land consisting of a house or part of a house for any other purpose. There are no dwellings on the land.

Before appropriating ‘open space’ land, a local authority must (in accordance with (Section 122(2A), LGA 1972):

- Advertise its intention to appropriate open space land for two consecutive weeks in a newspaper circulating in the local area.
- Consider any objections to the proposed appropriation – such objections must be considered, but it does not mean that they will prevent the scheme from proceeding.

If a local authority appropriates open space land under section 122(2A) of the LGA 1972, the land is released from any trust for the enjoyment of the public imposed by section 164 of the Public Health Act 1875 or section 10 of the Open Spaces Act 1906 (section 122(2B), LGA 1972).

There is no open space land within the Site. ‘Open space’ is defined in section 336(1) of the TCPA 1990 as any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground. It is also defined as such in section 20 of the Open Spaces Act 1906. The part of the Site shown shaded pink on the plan at Appendix 5 does not satisfy this requirement of open space, as it is fenced and not open to the public. It is being used temporarily by specific individuals who hold a key for use as a community garden.

The Equality Act 2010 (EqA 2010) created a single general public sector equality duty (PSED) under section 149 of that Act. The PSED applies to public authorities exercising public functions. The PSED requires public authorities to have “due regard” to:

- The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the section 149(1)(a) EqA 2010.

- The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (section 149(1)(b) EqA 2010)

The duty on public authorities to have “due regard” to the PSED in section 149(1) of the EqA 2010 is more than simply a requirement to have general regard. It is a continuing duty to which all decision-makers must have regard. Proper consideration must be given to the PSED and its requirements. An Equalities Impact Assessment in respect of the proposed development has been carried out and the key findings are summarised at Appendix 4 to this report.

*Implications completed by Mrinalini Rajaratnam Chief Solicitor (Property and Planning), 27<sup>th</sup> April 2023*

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## **Background Papers Used in Preparing This Report**

None

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## **DETAILED ANALYSIS**

### **PROPOSALS AND ANALYSIS OF OPTIONS**

#### **Background**

1. The council’s approach to economic growth is guided by its ambitious Industrial Strategy. Economic growth in Hammersmith and Fulham is rooted in imaginative placemaking that creates vibrant, sustainable public spaces and strategic housing development that allows communities to maintain and grow their diversity, cohesion, and ambition. Only by having inviting, liveable places and housing that is accessible to all can the borough realise its ambition of fostering inclusive economic growth.
2. Recognising that the council is well-placed to make a significant direct contribution towards the delivery of high-quality housing, it established the Building Homes and Communities Strategy in 2019. Its overarching aim is to foster diverse, collaborative communities through the provision of a range of affordable housing options, targeted at lower-income households and intermediate options for key-workers. It also provides important community infrastructure such as schools and community halls, promoting opportunity and cohesion.
3. More recently, the council pledged to secure up to 3,000 new affordable homes over the next four years through a range of avenues including the development programme, partnership initiatives and the planning pipeline.
4. The Lillie Road site is home to a nursery which has been vacant for a number of years, along with the West Kensington Tenants & Residents Hall, which

closed in 2020 due to the Covid Pandemic. In consultation with Asset Management colleagues, the site was identified for redevelopment for the provision of much needed affordable homes in the borough, along with a replacement T & RA Hall.

5. An initial feasibility study identified that the Site could accommodate a 45-home development.
6. In November 2020, Cabinet approved a General Fund capital budget of £1,802,000 to facilitate development activities associated with the redevelopment of the Site up to and including planning and procurement (RIBA Stages: 1, 2, 3 & 4).
7. In September 2021, the council appointed Lifschutz Davidson Sandilands (LDS), to act as lead Architect and 'Design Team', while Arcadis were appointed as the 'Control Team' for the scheme, to oversee project management, cost advice and CDM services.

### **Co-Production & Consultation**

8. The engagement process began in November 2021 with an initial invitation to Estate residents to join a Residents Advisory Panel for the project. This is the adopted model of engagement under the council's Defend Council Homes Policy. Residents Advisory Panels provide the opportunity for regular interaction between the project team and Estate residents as project designs are developed, for residents to be involved in appointing services, shaping consultation as well as influencing design. The Council also consulted and engaged residents in the wider neighbourhood in line with the Council's value of "*doing things with local residents, not to them*".
9. The council held three public exhibitions between June and November 2022. Engagement and co-production with local residents have had a direct and material effect on the evolution of the design from a concept design to the planning submission in January 2023. Over the course of the entire consultation period, 85% of local residents supported the redevelopment of the site, with 100% of respondents supporting the final designs in November 2022.
10. Some notable changes in the design as a direct result of residents' views include:
  - Height of the proposed building is reduced at either end where closest to neighbouring properties
  - Locating the new Hall so that the external space ties directly in with the public access to the site from both Lerry Close and Lillie Road
  - Ensuring that the scheme is as sustainable as possible
  - Maximising the provision of new trees and planting in the scheme
  - Adding in additional security measures and controlled lighting to the boundary areas to ensure security for both the new homes and existing neighbours.

11. Temporary community gardens are currently located on part of the site. Representatives of the community gardens have worked with the council to identify a suitable alternative location and replacement community garden space will be provided within the West Kensington Estate prior to the commencement of development at Lillie Road.

### **New homes**

12. The Development will deliver 42 new sustainable homes of which:
  - a. 12 homes will be for social rent (29%);
  - b. 9 will be intermediate homes (21%) with priority for key workers.  
And,
  - c. 21 will be for private leasehold sale (50%) homes.
13. 21 new affordable homes equates to 50% affordable housing provision in this Development. The further delivery of 21 private homes ensures the proposals align with the 'Building Homes and Communities Strategy' principle in self-financing the affordable homes within the Development. The Development is also partly financed by Right to Buy receipts.
14. Four associated accessible parking spaces will be provided within the development, each with an electric car charging point.
15. The council's ambition is to maximise affordable housing across its direct delivery programme. Following planning, officers will explore the use of further subsidy (such as affordable housing S106 funds) to convert the 21 market homes to affordable homes. The focus will be to provide further affordable rent, or low-cost home ownership opportunities for key workers. This will be subject ensuing the subsidy enables the scheme to comply with the council's viability benchmarks set out in appendix 1.

### **Improved Community Facilities**

16. The Development will include a replacement Tenants and Residents Association Hall for the West Kensington Estate, providing both internal and outdoor space for a range of flexible community uses.
17. One associated accessible parking space will be provided for use in conjunction with the T & RA Hall, with an electric car charging point.

### **Financial Considerations**

18. As part of the development process, professional advice has been regularly commissioned to monitor the financial performance of the scheme and to mitigate LBHF's exposure to financial risk. Such advice has informed the latest estimated build costs and sales values used in the viability, along with a reconciliation of associated development on-costs. These reflect latest inflation figures and respond to market analysis, trends and forecasts.
19. Pre 2017/18 'ringfenced' Right to Buy (RtB) receipts have been allocated as capital subsidy to support the funding requirements of this scheme.

20. The viability of the scheme is also reliant on the net sales income of both the private (leasehold) homes and a proportion of the intermediate housing sales. The net balance (debt) of the scheme's overall costs, therefore, will be funded within LBHF's HRA financial plan and associated loan arrangements.
21. The latest RIBA Stage 3 scheme meets LBHF's approved financial performance benchmarks. The scheme performance will continue to be updated to reflect the latest market conditions until LBHF enters into contract with a principal contractor, subject to further Cabinet Member approval.

## **Sustainability**

22. The proposed development will be designed and constructed to meet the National, Local and Regional Planning Policies. Through the application of the energy hierarchy, the following energy saving measures have been applied:
  - 'Be Lean' – Enhanced building fabric specification and Mechanical Ventilation with Heat Recovery (MVHR) to reduce space heating demand and provide continuous supply of fresh air. Energy efficient controls for lighting, space heating and hot water to reduce unnecessary use of systems.
  - 'Be Clean' – Localised plant room providing communal space heating and hot water. This strategy has been applied to help reduced distribution losses, improving the efficiency of the systems for low temperature distribution.
  - 'Be Green' – Use of Air Source Heat Pumps (ASHP) for low-carbon heating and hot water. Maximisation of solar Photovoltaic (PV) array across residential building where feasible.
  - With the above strategy applied an estimated c. 71% operational carbon dioxide emission reduction will be achieved on-site, with the remaining being offset by a carbon offset fund contribution levy. The homes will also achieve Passivhaus 'classic' standard and the new community hall facilities will achieve BREEAM 'excellent' standards.

## **Design principles**

23. Collaborative working with residents and co-production of the design has been the foundation of the Development from the start of the project.
24. Ecology and net zero carbon – The Site was selected early on in the process to be one of first sites to be delivered under the Council's Climate and Ecology Strategy and transitional targets. Based on design, the Development is estimated to reduce on-site carbon emissions by about 71% whilst achieving Passivhaus Classic Certification, and in doing so help bring down residents' energy bills by about 50%.
25. Likewise, the new community hall facilities will achieve BREEAM 'excellent' standards.

26. Accessibility and inclusiveness of the design has been one of the core principles underpinning the Development brief from the start. The Council engaged specialist accessibility consultants to maximise accessibility within the Development. Notably, Hammersmith & Fulham Disability Forum Planning Group were engaged and were given the opportunity to feed into the design. Their feedback was valuable and overwhelmingly positive.
27. Secure by Design principles were adopted and influenced the designs, to ensure the safety and wellbeing of all residents.
28. A number of other key principles that have underpinned the design are optimising urban greening and a net gain in biodiversity and ecology on the site, as well as providing a high level of attenuation, permeability and irrigation techniques across the Site.
29. This Development supports the Council's 2018-2022 Business Plan objectives and aspirations and will accelerate the delivery of much needed affordable housing.
30. Importantly, the Development meets the Council's financial viability tests while maximising the number of affordable homes and utilising external capital funding.
31. A full planning application for the Development was submitted, in January 2023, and expect the LPA's planning committee to consider the proposals in June 2023.

### **Next Stage**

32. Following on from design and the submission of a full planning application, in January 2023 (RIBA Stage 3), the next stage of the development is the appointment of a principal construction contractor (RIBA Stage 4). Cabinet is now requested to approve a Procurement Strategy to procure a principal construction contractor for the Development, along with a development budget to fund the construction stage and other development activities through to completion. Detailed finance comments are set out in Appendix 1 (exempt).
33. Following a soft market testing and review, as set out in the Procurement Strategy, the UK Governments online tendering portal - Find a Tender Service was identified to be the most suitable for the development as it provides access to the maximum number of appropriately sized contractors with demonstrable experience and ability to deliver a development of this size, complexity and nature.
34. Appointment of a construction contractor and successful delivery of this Development are dependent on the approval of this report's recommendations. The Development budget will also fund further enabling works that may need to be carried before construction can start on site including pre-commencement of planning conditions.
35. The main milestones of the Development, as the timetable currently stands, are outlined below with practical completion being anticipated during Autumn 2025.

Development's Main Milestones	Month
Planning Application Submission	January 2023
Cabinet approval - Procurement Strategy	May 2023
Cabinet approval - Development Budget	May 2023
Anticipated Planning Application Decision (Committee)	June 2023
Commencement of the Procurement Stage	June 2023
Conclusion of procurement stage with an Award Decision	March 2024
Construction contractor to start on site	June 2024
Completion (24 Months)	Spring 2026

## Options Analysis

### **Option 1: Do nothing (not recommended)**

36. The “do nothing” option would either mean not proceeding with this decision or not proceeding with the Development.
37. Not proceeding with this decision but proceeding with the Development would result in a significant delay to the construction and start on site. This option presents significant risk of losing Right to Buy funding, and there is no guarantee that the Council will receive any alternative future funding – to maintain viability.
38. Not proceeding with the Development would mean immediate write-off of costs incurred by the council to date.
39. Not proceeding with the Development would mean that the co-production process with the local community regarding new Council housing would not be delivered and would have reputational risks for the Council.
40. Not proceeding with this Development will also mean starting a new process to help decide the future of the site, which means continuing to manage a disused site and incur the costs to secure it, until such a time a decision is made about its future.
41. Ultimately not proceeding with this decision or the Development would indefinitely postpone the delivery of much needed genuinely affordable housing in the borough and new community facilities, not deliver against our strategic objectives and result in a loss of secured grant/subsidy commitments against the project.

### **Option 2: Approve this report's recommendations (recommended)**

42. This is the recommended option as it will allow the Development to proceed to the construction stage (RIBA stage 5), commissioning and handover (RIBA stage 6) and review (RIBA stage 7), and, deliver on the council's strategic

objectives and commitments to increasing provision of genuinely affordable homes in the borough; make best use of council assets, generate long-term sustainable income for the council, and safeguard the council's investment so far. Construction enabling elements including stopping up order application will be made as needed, for consideration by the relevant authorities.

43. Analysis of options relating to the Procurement Strategy are set out in Appendix 2 of this report along with analysis of the delegated decision on the potential use of Section 203. Other construction enabling

### **Reasons for Decision**

44. Budget Request: to allow the Development to proceed to construction stage, handover and completion (RIBA Stages 5, 6 & 7), as to achieve the council's overall objectives including increasing the provision of affordable housing in the borough.
45. Procurement Strategy: to comply with requirements contained in Contract Standing Orders (CSO 18), requiring approval of a Procurement Strategy before a regulated procurement exercise is commenced as well as outlining the procurement route selected to achieve best value for the council.

### **Equality Implications**

46. An Equalities Impact Assessment has been carried out and is set out in detail in Appendix 5. It is not anticipated that the approval of any of the recommendations set out at the beginning of this report will have any direct or negative impact on any protected groups under the Equality Act 2010.

### **Risk Management Implications**

47. This is a significant scheme to build new sustainable homes of the council's modern era development programme. The fact that it has been over 40 years since the council had an active development programme raises contractual, financial and operational risks that have been mitigated against through the commission and use of external experts and consultants. While this may mitigate against contractual and operational risks, it may result in council development costs to be marginally higher than comparable private developers.
48. The report identifies a number of risks including the currently volatility in the construction sector which could impact on the affordability of this scheme once tenders are received. It should be possible to pass inflation risk to the contractor at the point of tender, though feedback is that contractors are struggling to hold sub-contractors and suppliers to price. The management of this risk transfer needs to be carefully considered to ensure value for money for the Council.
49. The report identifies a number of risks relating to the financing of the scheme, including potential increases in interest rates which would drive up the cost of the scheme, failure to ensure RtB receipt conditions are complied with (so that funding can be used). Officers will need to monitor the inflation/interest rate



risks very closely and seek to take mitigating action wherever possible, or to take appropriate action where the scheme is considered to be no longer viable. There is a risk that costs already incurred could no longer be treated as capital and grant funding received may be lost or have to be returned if the scheme is subsequently considered to be no longer viable. Officers must ensure that clear project and governance processes are established for the monitoring and compliance of the project.

50. In any case, specific risks and mitigation for each delegation would be considered as part of the decision to exercise of the delegations to be granted by the recommendations of this report.
51. Appropriate programme and governance arrangements will be put in place to ensure that the programme is delivered, to budget, on time and the required outcomes are achieved. This will include maintaining a programme risk register.
52. Risk implications relating to the Procurement Strategy are set out in Appendix 2 of this report. Risk and mitigation relating to the delegated decision on the potential use of Section 203 are set out in Appendix 3 of this report. Undertaking a competitive procurement process is in line with the Council objective of being ruthlessly financially efficient.

*David Hughes, Director of Audit, Fraud, Risk and Insurance, 24 April 2023*

## **Climate and Ecological Emergency Implications**

53. New building has climate change impacts through both 'operational' emissions (from ongoing use of the building) and 'embodied' emissions (arising from the materials and construction). With a focus on operational emissions, the development has been designed to achieve Passivhaus certification, thereby achieving a high level of energy efficiency.
54. The proposed design will be a fossil-fuel free development, and achieves operational emissions reduction compared to current industry standards, with a c. 71% reduction in carbon. This goes beyond the minimum 35% reduction on-site required by the London Plan and the average 37% achieved by major developments in H&F in 2020.
55. During the detailed design stage, further work will be undertaken by the project and design team to specify materials that will reduce the overall embodied emissions within the design. Demolition of the existing building will also be managed to enable the reuse of suitable materials within the pre-construction stage of the development, with the intent to improve the modelled embodied emission levels above the GLA benchmark.
56. The development has used the H&F climate implications toolkit to maximise sustainability across the range of considerations. The development increases the area of planting and sustainable drainage over the existing Site and includes measures to provide resilience against extreme heat.

*Jim Cunningham, Climate Policy & Strategy Lead, April 2023*

## **Local Economy and Social Value**

57. Local Economy and Social Value are considered in Appendix 2 – Main Contractor Procurement Strategy.

## **List of Appendices**

- Appendix 1 – Exempt Finance Comments
- Appendix 2 – Procurement Strategy
- Appendix 3 – Use of Section 203 Powers
- Appendix 4 – Public Sector Equality Duty
- Appendix 5 – Equality Impact Assessment
- Appendix 6 – Red Line Boundary Plan Lillie Road