

**Decision Maker:** EXECUTIVE  
COUNCIL

**WITH PRE-DECISION SCRUTINY BY RENEWAL, RECREATION  
AND HOUSING POLICY DEVELOPMENT AND SCRUTINY  
COMMITTEE 16 JUNE 2021**

**Date:** 30th JUNE 2021

**Decision Type:** Non-Urgent Executive Non-Key

**Title:** YORK RISE, ORPINGTON

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**Chief Officer:** Director of Housing, Planning, Property and Regeneration

**Ward:** Farnborough and Crofton;

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## 1. Reason for report

- 1.1 To provide an update on scheme development and to award a direct contract award to Module-AR under the LHC, NH2 procurement framework to proceed with residential development of 35 homes at York Rise, Orpington, BR6 8PR, subject to planning permission.
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## 2. RECOMMENDATION(S)

**The Renewal, Recreation and Housing PDS Committee are asked to:**

- 2.1 Note and comment on the content of the report.

**The Executive is requested to:**

- 2.2 Note the progress of the project as set out within this report.
- 2.3 Recommend that Council approves a supplementary capital estimate of £2.1m.
- 2.4 Recommend that Council approves the revised financing of the scheme as set out in paragraph 14.10 including an internal loan from the General Fund to the Housing Revenue Account of £6,064k.

- 2.5 Approve a direct contract award to Module-AR for a total contract value estimated at £8.1m, using the LHC, NH2 Framework, for a design and build contract of housing at the site, as set out in para 9 of this report.
- 2.6 Authorise an appropriation of the Council's interest in the land shown edged red on the plan at Appendix A for planning purposes under section 122 of The Local Government Act 1972 and section 237 of the Town and Country Planning Act 1990, both as amended.
- 2.7 Delegate authority to the Director of Corporate Services to deal with all necessary legal arrangements to effect and bring into implementation the appropriation set out in this report.
- 2.8 Delegate authority to the Director of Housing, Planning and Regeneration in consultation with the Portfolio Holder to take all of the necessary steps to appropriate the site shown in the plan at Appendix A for housing purposes to be accounted for in the Housing Revenue Account (HRA)
- 2.9 To delegate authority to the Assistant Director of Highways to adopt the road, subject to planning permission. Following initial discussions with LBB highways officers; given that the York Rise site is a council development it was agreed that the road would be adopted subject to it being built to appropriate standards.
- 2.10 Approve the utilisation of £758k Section 106 contributions.

**Council is requested to:**

- 2.11 Approve a supplementary capital estimate of £2.1m detailed in full in the accompanying part 2 report.
- 2.12 Approve the revised financing of the scheme as set out in paragraph 14.10 including an internal loan from the General Fund to the Housing Revenue Account of £6,064k.

## Impact on Vulnerable Adults and Children

1. Summary of Impact:
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## Corporate Policy

1. Policy Status: Not Applicable Existing Policy New Policy: Further Details
  2. BBB Priority: Children and Young People Excellent Council Quality Environment Safe Bromley Supporting Independence Vibrant, Thriving Town Centres Healthy Bromley Regeneration Not Applicable: Further Details
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## Financial

1. Cost of proposal: Estimated Cost £8.1m
2. Ongoing costs: Estimated revenue savings of £224k per annum
3. Budget head/performance centre: Capital Programme
4. Total current budget for this head: £6m
5. Source of funding: Affordable Housing Section 106 contributions, Investment Fund and Housing Investment Fund earmarked reserves and GLA

## Grant

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## Personnel

1. Number of staff (current and additional): Existing resource
  2. If from existing staff resources, number of staff hours:
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## Legal

1. Legal Requirement: None. Statutory Requirement Non-Statutory - Government Guidance None:
  2. Call-in: Applicable Not Applicable: Further Details
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## Procurement

1. Summary of Procurement Implications:
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## Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
- 

## Ward Councillor Views

1. Have Ward Councillors been asked for comments?  
Yes
2. Summary of Ward Councillors comments:

- Desired updates to the scheme have been described, including to ensure that the windows overlooking neighbouring gardens should have high sills and potentially be obscured.
- Zero car parking strategy queried. Officers note that this is a planning policy requirement. As a PTAL 6A site, the planners have stated that no additional car parking is permitted. This is a car free development with parking only 4 parking bays for blue badge holders.
- Concern that the site is overdeveloped with queries as to how the site allocation numbers were established. Project team noted that the site needs to accommodate 35 homes in accordance with the site allocation within the Bromley local plan.
- Delivery and service vehicle provision queried. Officers noted that the scheme provided an adequate width roadway and hammerhead to accommodate all types of access. The delivery and service vehicle provision has also been reviewed by LBB highways.
- Queries relating to the loss of the stepped pedestrian access. Officers noted that the Designing Out Crime Officer has requested that there is a single means of access into the development.
- Clarity regarding the boundary treatment to the site and officers to ensure that the application drawings were made clear to showcase what is happening on the development.
- Queries raised to whether there should be access to the area of slope in front of the retaining wall on the York Rise side. Officers confirmed that this area would be shown as being fenced off.
- Issue's raised due to the building height being out of place with surrounding properties, but as noted in the report the proposal has been modified following this feedback.
- Officers have held two online consultation events plus a separate resident home briefing.

Cllr Joel also raised additional comments in the scrutiny committee meeting on the 16<sup>th</sup> June. These additional documents are in the minutes of the meeting.

### **3.0 BACKGROUND**

- 3.1. For Bromley, like most London boroughs one of the most significant long-term pressures is the impact of homelessness and provision of temporary accommodation. There are currently approximately 1,800 households in Temporary Accommodation (TA) this is a net increase of 21 per month and approximately 1,100 households are in costly forms of nightly paid TA, putting a continued strain on the Council's revenue budget.
- 3.2. The Council's Housing Strategy and Transformation programme sets out the agreed approach to support the delivery of affordable housing on Council owned sites. Council owned sites make a valuable contribution to meeting the borough's affordable housing supply.
- 3.3. The Council also faces other housing and planning pressures; the London Plan (adopted March 2021) sets out strategic policies, including the borough's housing target of 774 per annum. The Bromley Local Plan is an adopted document setting out the principles of development across the borough and allocates sites for housing. These documents comprise of the Development Plan and are used to assess planning applications. The Council is in need of increasing overall housing supply.
- 3.4. The York Rise site is a vacant site owned by the Council and identified in the Local Plan for 35 dwellings (Site Allocation 12). In July 2019, the Council approved a contract award (report no. ECHS 19061) to Mears for the supply and build of a modular housing scheme and approved the addition of £6m for the scheme to the Capital Programme. This contract has since been terminated and new work was undertaken to bring housing forward on this site.
- 3.5. In May 2020, the Council appointed Pellings to undertake a feasibility study to assess the site constraints. The report found the site to be developable for residential development.
- 3.6. In November 2020, a report outlined the procurement strategy (Report ref: HPR2020/037) – to use the LHC NH2 framework, and to further progress the scheme to a planning application. Officers went out to tender using the LHC NH2 framework in December 2020 for a residential scheme of 35 homes and entered into the Pre-Commencement Services Agreement contract to develop RIBA stages 0-3. Following this procurement exercise, Module-AR were successfully appointed in January 2021, in conformity with the 60/40 price/quality Council's Procurement Rules. As part of this appointment, Rivington Street Studios architects ("RSS") were also appointed as the design team.
- 3.7. To date, RIBA stages 0-3 have been undertaken which has included extensive design development (including options analysis and testing), surveys, public and ward member engagement (including a presentation to Development Control Committee members), a pre-app with LBB Planning, cost analysis and the submission of a planning application.
- 3.8. The proposed development consists of 35 affordable homes (14 x one bed, 17 x two bed and 4 x 3 bed homes) which if approved, will provide 102 amount of people a permanent dwelling.
- 3.9. The site is considered feasible to progress to the Design and Build (construction) phase (RIBA Stages 4-7), subject to planning permission being granted. This report recommends therefore that the Design and Build contract is entered into with Module-AR to develop and build the site, following a decision by LBB Planning. This report also outlines the engagement and the scheme proposals submitted to Planning.
- 3.10. This report also requests Executive authority to appropriate the land outlined on the plan at Appendix A for planning purposes, in order to facilitate the implementation of the proposal for the development of these 35 homes.

3.11. The Executive is requested in particular to note details below of how implementation of the proposal will make a significant contribution to the promotion and improvement of the economic, social and environmental well-being of the area.

#### **4.0. SCHEME DEVELOPMENT AND ENGAGEMENT**

4.1. The Local Plan Site Allocation is the starting point and the tender requirements reflected this:

- A development of 35 homes in line with the Local Plan, that will be planning compliant and can be delivered on site.
- Design options to be tested
- An agreed design with the Council that is sympathetic to the local surroundings.
- A modular development suitable for permanent occupation, an efficient build and for those living there
- Housing that meets the London Housing Space Standards.
- A range of dwelling sizes, including 10% wheelchair accessible housing on site.

4.2. The site has a number of physical constraints including steep banking with heavy and mature trees around the outskirts reducing the developable area of the site; a steep access road into the site; two retaining walls that need strengthening; is surrounded by development that is higher and overlooks the site; is an archaeological priority area; potential air raid shelters located underground; and, has existing wildlife and biodiversity on site. These all have physical and cost implications for the overall design.

4.3. The site context is predominantly residential, with community and commercial development to the east clustered around the nearby Orpington railway station. To the west of the site and north of the site is predominantly residential development. Crofton Halls and associated car parking lies to the east of the site on the opposite side of York Rise. To the south the site is bounded by the A232 Crofton Road. The site has a PTAL rating of 6a giving excellent transport links to Orpington train station.

4.4. Given the constraints and the Local Plan policy context, three design options were initially developed and tested for this site – these options were developed in conjunction with different service areas and requirements (for example, highways, emergency service/refuse access requirements). Following Ward member engagement, officers proceeded with the option of 35 homes with a mixture of maisonettes and flats and houses on site (see, Appendix B 'Option A'). Option A formed the basis of the public engagement set out in 'Engagement' below.

4.5. Option A comprises of the erection of a four-storey building consisting of fifteen apartments, a terrace of twenty maisonettes over three and four storeys along the front of York Rise and two two-storey houses to the right of the entrance, to provide 35 affordable homes in total centred around a 'village green'. This also included shared amenity space with children's play area, on site wheelchair car parking, cycle parking, space for refuse, a home- zone and landscaping.

#### **5.0. ENGAGEMENT**

5.1. Officers 'opened' public engagement by sending out a letter to 275 residents. See Appendix C, for the letter, inviting interested parties to attend an online public engagement event on April 26<sup>th</sup> and/or April 28<sup>th</sup> via Microsoft Teams. Given the Covid-19 restrictions, it was not considered safe to do a mass visit or meeting for all to attend.

5.2. During these online events, officers and RSS presented the history and context of the site, the proposed design was accompanied by visuals followed by 40 minutes of questions and answers. This provided residents with the opportunity to understand the development in further detail. 30-35 people attended across both events.

- 5.3. Following this, a Covid-19 safe site visit was arranged whereby an officer and the architect at the request of individuals met on site to discuss key concerns and to listen to those potentially affected by the development.
- 5.4. A dedicated email address was also set up and to date 35 written comments have been received. Officers have been in correspondence with residents and this has given residents the opportunity to regularly correspond with officers throughout.
- 5.5. Alongside this, the project team have engaged with Bromley Planners through the statutory processes (and other service areas such as Highways, Environment) via a pre-application and presented to the Development Control Committee, as applicants.
- 5.6. From the engagement above, the comments received centred on the following matters:
- Appearance, size and scale
  - Overlooking into gardens and relationship with surrounding area
  - Car parking
  - Sustainability and existing wildlife.
- 5.7. Following this active engagement stage, the design and layout has been adapted and improved to address as many concerns as possible whilst delivering a viable and policy compliant scheme. The design and layout submitted to Planning can be seen below (Appendix B, Option A).
- 5.8. The key changes from Option A are: the integration of the two semi-detached houses into the terrace and apartment building, creating additional green space and improving the relationship between the proposed development and the existing houses along 1-7 York Rise. Issues were raised concerning the relationship between the proposed and existing housing at 1-7. Appendix D shows a substantially improved relationship and design.
- 5.9. The height of the terraced housing has been reduced from three/four storeys to part two/ part three storeys reducing the overall massing and impact along York Rise.
- 5.10. To minimise the impact upon those in Yeovil Close, the apartment building has been set back further from the site boundary increasing the distance between the proposed and new development which will enable planting of more mature trees to act as natural screening. The internal layouts have also been designed so that living spaces do not look over these gardens; the location and size of windows has also been assessed to reduce overlooking and screening will be introduced to balconies to minimise any opportunity for overlooking and achieve optimum privacy for surrounding occupiers.
- 5.11. Site surveys have been undertaken to assess the sustainability and existing wildlife with the intention of retaining as many trees as possible without displacing the existing wildlife. The development will improve the sites biodiversity with landscaping features including new tree planting, additional planting in wild areas with indigenous plants and nesting boxes and invertebrate habitats. The development will add to the existing biodiversity within the surrounding area and the new buildings will feature sustainable drainage and attenuation measures. An ecological assessment has been undertaken which establishes the sites baseline condition and will assess biodiversity improvements delivered by the proposed development to ensure that local concerns are addressed.

- 5.12. The proposed level of car parking on site is in line with the London Plan Policy T6 Car Parking. In accordance with Table 10.3 of Policy T.6 of the London Plan 20% of these parking bays will have active electric vehicle charging facilities. Given the site's excellent transport services and connectivity, proximity to a town centre, the policy requires this to be a car free development, except for 4 Blue-badge spaces. The impact of increasing car parking provision on site has substantial disbenefits upon the overall design, resulting in less green and children's play space, an overall reduction in wildlife and biodiversity to provide hard surfacing, and a loss in greater trees.
- 5.13. There are a number of mitigation measures in place - as the Council will manage and maintain this site, through the allocation policy and the tenancy agreements, it will be made clear that there is no parking provision provided on site. The surrounding streets are also in a Controlled Parking Zone restricting on streetcar parking. The car parking survey has established there is sufficient capacity in the surrounding streets to accommodate visitors on times outside of the CPZ restricted hours.
- 5.14. The engagement has been highly informative, and the final proposed development has been submitted to planning for determination. The proposed development is a planning policy compliant scheme that meets the Council's objectives of delivering a 100% affordable housing scheme on a brownfield, Council owned site.

## **6.0. ROAD ADOPTION**

- 6.1. It is intended that the road will be adopted by Bromley Council. The site is served by an internal roadway accessed from York Rise. This will be built to an adoptable standard. The adopted site road will also be yellow lined to restrict parking; and enforcement will be possible by LBB parking officers, as with surrounding streets. Sufficient space has been incorporated into the design of the scheme to allow refuse, fire service and other emergency vehicles to be able to enter, turn on site and exit in forward gear. Officers have consulted with the LBB Highways team for specific road adoption measures.
- 6.2. Once the schemes design is finalised and planning permission has been granted, officers will start the road adoption process in accordance with the highways team. It will take one year for the road to be formally adopted, however; the decision to adopt the road can be made in a matter of six weeks because the landowner is the Council. As part of the road adoption process, LBB highways will publicise a notice explaining that the council intends to adopt this road, of which only the landowner can object too. No member of the public can object to this road adoption process. Additionally, road adoption consultants will undertake a site visit to assess the site. The costs of road adoption have been factored into the scheme development costs. The proposal will result in a positive benefit to the sites existing access and overall parking within the area.

## **7.0. COST ANALYSIS**

- 7.1. The project has previously been agreed as a capital scheme with a budget allocated to it. This budget was based on a different scheme with lesser information. As set out in paragraph 4.2, the site has a number of constraints, which have been analysed and costed, and planning policy requirements. As part of the scheme design, the project team have analysed the build costs of the proposed scheme. The proposal is a high-quality residential scheme meeting all planning policy requirements.
- 7.2. Based on the timings of this proposal, this scheme is eligible for the GLA Building Council Homes for Londoners grant funding. This is tariff-based whereby the lowest affordable housing



rents are granted a higher subsidy per property. Officers recommend the scheme is set at 100% London Affordable Rent (LAR) given that this round of funding will not be available after October 2022 and that these rental levels are more achievable for many of those in housing need.

- 7.3. The design has been heavily tested within the public domain as the council delivering it; if the council is to dispose of these homes it would create a lack of distrust within the authority. The council doesn't currently have a five year land supply and the council has an active role to play in boosting this supply and the development of York Rise for the purposes of the HRA will essentially work towards addressing a lack of housing for Bromley residents while increasing the councils housing stock.
- 7.4. There has been cost analysis undertaken of the proposed design – the costs of which reflect the proposal as a comprehensive residential scheme providing homes for many generations to come. The construction of the site is also a complex site to develop with multiple abnormal construction costs, such as the air raid shelters, two retaining walls with structural concerns and drainage improvements; the re-grading of the access road to make it an accessible site for all vehicles; landscaping improvements as the site is currently predominantly hardstanding. Over and above these costs is the construction of the buildings proposed and the cost implication of various planning policies, such as private amenity space for each unit
- 7.5. As outlined in the Engagement section of this report, there has been concern of the design of the buildings and the overall quality of the proposal by residents and by LBB Planners, given the topography of the site and the impact it has on the streetscape. It is very important therefore that the design and appearance of the scheme is of a high quality.

## **8.0. LAND APPROPRIATION**

- 8.1. The purpose of the Appropriation for planning purposes is to ensure that the redevelopment of York Rise may benefit from the power in section 203 of the Housing and Planning Act 2016 to override all third-party rights including covenants and easements. The Act enables public bodies to implement this power where the demonstration of the use is demonstrably in the public interest and proportionate to the end being pursued.
- 8.2. The Council in developing its proposals has given due consideration to the third-party rights that are likely to be affected or injured as a result of the proposed redevelopment. The Council's legal advisers and consultants have reviewed the rights of adjoining property owners. At this stage, there may be any potential right of light injuries caused as a result of the redevelopment. A right to light survey will be completed and this will identify whether any rights have been infringed upon and potential costs for injuries will be identified.
- 8.3. To demonstrate the use of this power, the Act requires the Council to demonstrate the public interest and benefit. The site will provide 35 new affordable homes on a currently vacant site; affordable housing is in high demand in the borough and will generate economic and social benefits to the local community. The scheme is of a high quality design paying due regard to liveability and quality of life in the local area and to future occupiers; it promotes environmental benefits by being located in close proximity to a town centre with good public transport connections, in conformity with the Development Plan and meets sustainable development objectives. Overall, the public interest benefits generated by the redevelopment and regeneration far outweighs the potential infringement the scheme will cause to the private rights of third parties.
- 8.4. The land following Appropriation will be transferred to and administered from the General Fund Account to be administered under the Housing Revenue Account (HRA). Once the development has been completed the land will be appropriated as housing land. The Council

will not however lose the protection over the homes built whilst the land was appropriated for planning purposes, as such the newly built development would not be subject to an injunction (i.e. third parties whose rights have been injured as a result of the development will not be able to halt the development).

- 8.5. It should be noted that the Appropriation of the site for planning purposes will generate substantial public benefits which will far outweigh any injuries to the private rights of third parties.
- 8.6. Appropriation of the land for planning purposes would prevent any injunctions being sought by a party whose right may be interfered with and thereby preventing and delaying the proposed development. It will also ensure that the commercial and market attractiveness of the scheme is not diminished by the existence of injunctive rights which can frustrate the development.
- 8.7. Overall, the redevelopment is considered to have no detrimental impact on the surrounding residents. The re-development will regenerate the site with a significant need for investment and the upgrade will start to address some of the long-standing socio-economic problems faced by the surrounding local area and will significantly enhance the quality of the build environment of the surrounding area and will provide much needed affordable housing and as a result improve the life chances of the area's current and future residents.
- 8.8. Accordingly, it is considered that the public interest benefits generated by the redevelopment and regeneration far outweighs the potential infringement the scheme will cause to the private rights of third parties.

## **9.0. CONTRACT AWARD**

- 9.1. Subject to the proposal being granted planning permission, officers recommend awarding a Design and Build contract award to Module-AR. The LHC NH2 Framework facilitates a two-stage contract whereby there is a break between the PCSA and the Design and Build contract. Module-AR submitted a tender that demonstrated their technical competence and ability in terms of managing and delivering dwellings utilising modern methods of construction.
- 9.2. There are some significant benefits of modern methods of construction, this includes large parts of the development being undertaken in the factory environment that is not inhibited by weather, in addition the units can be fully tested in a safe environment. The primary benefit is the speed of development, with building work-streams occurring simultaneously. There are also benefits in terms of being less intensive construction management wise lessening the impact for neighbouring residents. The proposed units are energy efficient, compliant with all building standards and regulations. As required as part of the tender, the dwellings will be accredited by the Build Offsite Property Assurance Scheme (BOPAS), with a minimum life span of 60 years.
- 9.3. Following the successful completion of the PCSA, it is now recommended to proceed to award a contract to Module-AR for the design and build of 35 homes at an estimated contract value of £8.1m. The contract award value is based on the cost analysis completed to date during the PCSA stage. Officers would enter into a contract with Module-AR subject to the determination at planning. If the scheme is not granted permission, officers would not enter into a contract with Module-AR. The timing of this is important to ensure that the programme set out below can be met as mobilisation of the contract and the particulars will take place following planning and before start on site.

## 10.0. PROGRAMME

10.1. Indicative schedule of works - pending the recommendations of this Report, the indicative timescales are set out below:

November 2020-January 2021	Tender for D&B Contractor to be Awarded by Delegated Authority, pending approval of this award.
December 2020	LBB entered into Agreement with GLA for Grant and acquired Investment Partnership status.
February-May 2021	Officers work with appointed contractors and project group to develop design and layout. Further surveys and other site investigations.  Engagement with local residents and Ward Members on site proposals.  Pre- Application with Planning.  Full planning application submission to Planning.
June 2021	Executive decision for contract award subject to Planning decision.
August 2021	Decision to be determined by LBB Development Control Committee.
September 2021 – December 2021	Subject to decision by Planning – Council enters into Design and Build Contract with contractors.  Commence RIBA stage 4
January 2022	Site Works commence.
December 2022	Site Works completed.

## 11.0. RECOMMENDATIONS

11.1. The recommendations outline approval for additional capital funding for the proposed residential scheme submitted to Planning and outlined in Para 14. Residential development of 35 homes at York Rise has been agreed by the Council through the Local Plan and previously as a capital project (Report ref. HPR2020/037). A new proposal has been developed, meeting the Council's need to deliver more affordable homes with a planning policy compliant proposal.

11.2. The second recommendation is to agree a contract award to Module-AR at an estimated total contract value of £8.1m, subject to planning permission being granted. The scheme proposals have been submitted to Planning and are under consideration currently. Once determined, under delegated authority, the Council will enter into a Design and Build contract with specialist contractors, Module-AR.

- 11.3. The third recommendation is to appropriate this site from the General Fund into the HRA which would allow the Council to discharge its homelessness duty rather than being used for temporary accommodation. The Council's interest in the land shown on the plan at Appendix A can be appropriated for planning purposes under section 122 of The Local Government Act 1972 and section 237 of the Town and Country Planning Act 1990, both as amended.
- 11.4. The Director of Corporate Services is authorised to deal with all necessary legal arrangements to effect and bring into implementation the appropriation set out in this report.
- 11.5. Authority is delegated by the Executive to the Director of Housing, Planning and Regeneration in conjunction with and in consultation with the Portfolio Holder to take all of the necessary steps to appropriate the site shown in the plan at Appendix A and to manage the implications arising therefrom and to deal with any compensation issues.

11.6. Subject to planning permission being granted

## **12.0. IMPACT ON VULNERABLE ADULTS AND CHILDREN**

- 12.1. The proposal will deliver homes for those in temporary accommodation, supporting vulnerable adults and children in the community.

## **13.0. POLICY IMPLICATIONS**

- 13.1. The proposal will deliver affordable housing to meet the Council's wider temporary accommodation needs.

## **14.0. FINANCIAL IMPLICATIONS**

- 14.1. At its meeting in July 2019 in considering the award of the now terminated contract, the Executive agreed the addition of the scheme to the Capital Programme with an estimated value of £6m, funded by £2.5m from the Housing Investment Fund and £3.5m from the Investment Fund earmarked reserves.
- 14.2. In November 2020, it was agreed by the Portfolio Holder that up to £350k be allocated for consultants to carry out design work, assessments and costings. If the scheme eventually progresses, then the costs of the surveys and consultants will be charged to the capital scheme. £277k has been spent on the PCSA works and £23k on site surveys.
- 14.3. This report requests a supplementary capital estimate of £2.1m to a total of £8.1m based on the estimated scheme costs set out in the part 2 report.
- 14.4. Having learnt from previous housing schemes, it is prudent to allow for a sufficient contingency on both the construction and LBB costs, especially in light of various concerns regarding the supply and cost of materials which are going up significantly due to the current economic climate/impact of the Covid-19 pandemic. A contingency of 5% is being allocated given the current uncertainty.
- 14.5. Following the decision to re-open the Housing Revenue Account (HRA), the Council has the option to appropriate this site from the General Fund into the HRA which would allow the Council to discharge its homelessness duty rather than being used for temporary accommodation. There are various rent levels that could be used, but the two main ones are the London Affordable Rent, a social rent which is currently eligible for £100k grant per unit from the GLA, or Local Housing Allowance levels, an affordable rent which is not currently eligible for GLA grant.

14.6. In order to let at affordable rent levels rather than social rent, the Council would also need to meet one of the following requirements:

- (a) a housing supply delivery agreement between that provider and the Homes and Communities Agency (now known as Homes England) or the Greater London Authority and the accommodation is permitted by that agreement to be let at an affordable rent;
- (b) an agreement between a local authority and the Secretary of State and the accommodation is permitted by that agreement to be let at an affordable rent; or
- (c) the Secretary of State, Homes England or the Greater London Authority has agreed that it is appropriate for the accommodation to be let at an affordable rent.

14.7. The table below summarises the financial implication of appropriating into the HRA at either of the two rent levels above, using current 40-year Public Works Loan Board (PWLB) rates for comparative purposes:

	<b>London Affordable Rent £'000</b>	<b>Local Housing Allowance £'000</b>
<b><u>Capital</u></b>		
Build cost	8,072	8,072
Land appropriation value	2,250	2,250
Section 106	-758	-758
GLA grant	-3,500	0
<b>Total capital financing requirement</b>	<b>6,064</b>	<b>9,564</b>
1 beds	14	14
2 beds	17	17
3 beds	4	4
	<b>35</b>	<b>35</b>
Average net cost per unit	173	273
<b><u>Revenue</u></b>		
Annual rent	-302	-436
Annual management costs	118	118
Annual loan repayment	228	360
<b>Total annual surplus (-) / deficit (+)</b>	<b>44</b>	<b>42</b>
Annual savings on TA	-224	-224
<b>Total net revenue impact</b>	<b>-180</b>	<b>-182</b>
NPV over 40 yrs (excl. TA savings & property value)	-1,146	-2,226
NPV over 40 yrs (TA savings)	-5,597	-5,597
Payback period (excl. TA savings)	33 years	31 years

- 14.8. Setting rents at Local Housing Allowance results in the highest net capital cost, but also results in the highest Net Present Value and shortest payback period (assuming build costs and land transfer is repaid over 40 years). However, as set out in paragraph 7.2, it is recommended that rents are set at London Affordable Rent for these schemes. This will allow the Council to benefit now from GLA grants which may not be available in the future (or at the same level). It is also recognised that these rent levels are also truly affordable for some tenants.
- 14.9. It should be noted that by appropriating the land into the HRA, the market value of the land is charged to the HRA. Although this is not an actual capital receipt, it does mean that the General Fund can incur more capital expenditure without needing to borrow through an adjustment to the Capital Financing Requirement. At present, the land transfer value is estimated at £2.25m.
- 14.10. It is proposed that the revised scheme (including the land appropriation value) will be financed as follows:

	<b>£'000</b>
Previously agreed capital cost	6,000
Financed by:	
Housing Investment Fund	2,500
Investment Fund	3,500
	<u><b>6,000</b></u>
Revised scheme cost (inc. land value)	10,322
Financed by:	
GLA grant	3,500
Section 106 contributions	758
Internal borrowing	6,064
	<u><b>10,322</b></u>

- 14.11. As the Investment Fund and Housing Investment Fund are General Fund earmarked reserves which have been allocated for long term investments, it is proposed that these are used for the £6,064k internal loan from the General Fund to the HRA, and that interest is charged at 2.16%, which is the 40 year rate that the Council could borrow from the Public Works Loan Board. This internal borrowing could be refinanced in future, for example when considering the financing of future housing schemes.
- 14.12. Although there is a shortfall of net income in the HRA for the first 6 years at LHA rents or 9 at LAR rents, this then becomes a surplus as a result of rent increases assumed at 2% per annum. This shortfall can be covered by the surpluses from other schemes that have been agreed. Surpluses in future years will be ringfenced within the HRA for major repairs and future capital expenditure.

## **15.0. FINANCIAL AND WIDER RESOURCE IMPLICATION WITH REGARD TO THE PROPOSED APPROPRIATION**

- 15.1. The review of third-party rights indicates that there is a risk of injunction from those third parties whose rights may be injured however third parties may seek damages.
- 15.2. These damages are likely to be of a significant value but also the existence of injunctive rights would jeopardise and hold to ransom the regeneration if the Council did not appropriate the land for planning purposes.
- 15.3. On appropriation for planning purposes the value of compensation is calculated as the diminution in value of the third party's property as a result of the development. The Council is confident, because of the significant investment being made in regenerating the site, that the

redevelopment will enhance the value of the properties on and around the site, in which case there may be potentially minimal and or no compensation due. The Council intends to seek indemnity insurance to cover any compensation due. The premium for the insurance policies is expected to be within the existing project budget and may require additional funding.

- 15.4. The appropriation of the site is required to extinguish the rights or objection, and the potential delay that may be caused to the regeneration scheme. Whilst the appropriation does not prevent any claims for compensation, it limits it to 6 years and with the improvements the regeneration will make to the area, the financial loss is likely to be minimal.

## **16.0. PERSONNEL IMPLICATIONS**

- 16.1. There is adequate resource to procure and lead the development of the scheme. The Council, however, does not have the requisite skills to deliver this scheme and therefore must go out to the market for specialist consultancy services.

## **17.0. LEGAL IMPLICATIONS**

- 17.1. Contract/Procurement Law

- 17.2. This framework is open for use by all English local authorities including the Council. Accordingly, the Council may use that framework according to the rules of that framework, including use of relevant Call-Off Contract terms and conditions.

- 17.3. Officers may wish to consult Legal Services to check call off terms and conditions, if they wish to do so.

## **18.0. PROCUREMENT IMPLICATIONS**

- 18.1. This report seeks to direct award a contract to Module-AR at an estimated total contract value of £8.1m, using the LHC, NH2 Framework, for a design and build of 35 homes.

- 18.2. In accordance with Clause 3.5 of the Contract Procedure Rules, the Head of Procurement has been consulted regarding the use of the Framework. The award will be conducted in line with 7.4 of the Council's Contract Procedure Rules. As the value of the contract is above the UK thresholds, it must be conducted in line with cl. 33 of the Public Contracts Regulations 2015.

- 18.3. The Council is able to make use of the Framework and has been properly included on the Contract Notice.

- 18.4. For the requirements set out above, the method of direct award can be used under the terms of the framework.

- 18.5. As the contract value is over £25k, an award notice will need to be published on Contracts Finder. As the contract value is over the EU Thresholds, an OJEU award notice must be published

- 18.6. The Council's Contract Procedure Rules require the following for authorising an award via a framework for a contract of this value; the Approval of the Executive following Agreement by the Portfolio Holder, Chief Officer, the Assistant Director Governance & Contracts, the Director of Corporate Services and the Director of Finance must be obtained. In accordance with CPR 2.1.2, Officers must take all necessary professional advice.

- 18.7. The actions identified in this report are provided for within the Council's Contract Procedure Rules, and the proposed actions can be completed in compliance with their content. In accordance with CPR 2.1.2, Officers must take all necessary professional advice.

## **19.0. PROPERTY-APPROPRIATION LAW**

19.1. In order for section 237 of The Town and Country Planning Act 1990 as amended by Section 203 of the Housing and Planning Act 2016 to apply to all of the land to be appropriated, all of the Council's interests must be held for planning purposes. It is therefore necessary to appropriate the freehold interest the subject of the proposed appropriation for planning purposes under section 122 of the Local Government Act 1972 as amended.

## **20.0. HUMAN RIGHTS**

20.1. The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ("The Convention"). Specific rights protected by the convention include, amongst others:

20.2. The right of everyone to the peaceful enjoyment of their possessions which can only be impinged upon in the public interest and subject to relevant national and international laws.

20.3. The right to a private and family life, home and correspondence, which can only be impinged upon in accordance with the law and where such encroachment is necessary in the interests of national security, public safety or economic well-being of the country.

20.4. The above rights would be affected by the use of appropriation for planning purposes. However, the European Court has recognised that "regard must be had to the fair balance that has to be struck between competing interests of the individual and of the community as a whole. Any interference with a Convention right must be necessary and proportionate.

20.5. In light of the significant public benefit which would arise from the implementation of the proposed regeneration dealt with in this report and the fact that owners and occupiers within the sites have been contacted or will be contacted regarding the regeneration and will, should the land to be appropriated, qualify for compensation in terms of the general law, the Council has concluded that it would be appropriate to resolve to appropriate the land for planning purposes.

20.6. The Council is of the view that there is a compelling case in the public interest that the regeneration should outweigh the private interests held by third- parties affected by the proposed appropriation. It is also believed that the use of the appropriation for planning purposes powers to achieve the Council's regenerative objectives are proportionate to interfere with any possible third-party rights that may be affected in terms of human rights.

## **21.0. OVERRIDING EXISTING RIGHTS**

21.1. Section 237 of the 1990 Act as amended authorises the erection, construction or maintenance of any building or work on land which has been acquired or appropriated by a local authority for planning purposes if it is done in accordance with planning permission, even if it involves interference with an interest or right such as an easement or a right of light.

21.2. The effect of this section is to ensure that where land is owned by a local authority and held for planning purposes then existing rights, which could prevent the development of that land from proceeding, can be overridden. The powers contained in section 237, as amended, do not remove any legitimate rights of owners or occupiers to compensation which may arise from the loss of such rights but does remove the potential for injunctive action



### 21.3. GENERAL

- i) "Appropriation" is the formal process by which the Council changes the designated purpose for which a piece of land is held, from one statutory purpose to another.
- ii) Appropriation cannot be achieved informally by looking at how a Council deals with a piece of land either as a matter of practicality or by implication.
- iii) It is a precondition that any land to be appropriated for planning purposes must be no longer required for the purpose it was held prior to that appropriation.
- (iv) Whether this is the case is properly a matter for the Council's decision-making in weighing up alternative demands on resources in each circumstance but is a question that must be formally considered and in the words of the Constitution "declared surplus" even if in regeneration projects however this condition is almost always self-evidently satisfied.

21.4. Section 122 of the Local Government Act 1972 permits appropriation of Council land which is no longer required for the purpose for which it is held to another statutory purpose (i.e. for which the Council could acquire land).

21.5. If any of land the subject of appropriation consist of or form part of open space the Council cannot do so unless it has advertised its intention to do for two consecutive weeks in a local newspaper and specifically considered any objections received pursuant to Section 122 (2A) of the Local Government Act 1972.

21.6. "Open Space "is defined to mean "any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground"

<b>Non-Applicable Sections:</b>	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	Appendix A - Site Plan Appendix B - Option A Appendix C - Letter to residents Appendix D- Proposed scheme design

### 22.0. APPENDICES

22.1. Appendix A- Site Plan



22.2. Appendix B- Option A

Previous site layout



Current village green proposal



22.3. Appendix C – Letter to residents





**Housing, Planning & Regeneration**  
Civic Centre, Stockwell Close, Bromley, BR1 3UH

Telephone: (020) 8464 3333  
Internet: [www.bromley.gov.uk](http://www.bromley.gov.uk)  
Email: [Housing.development@bromley.gov.uk](mailto:Housing.development@bromley.gov.uk)

Dear Resident,

We are writing to inform you of a proposed housing development at the vacant site on York Rise, Orpington, BR6 8PR. We are currently developing the design in preparation of submitting a planning application and are seeking your views.

The intention of the scheme is to provide 35 permanent, new high-quality, much needed homes for Bromley residents. The Council is working in partnership with off-site manufacturing specialists Module-AR, and award-winning Rivington Street Studio Architects, to deliver and design this scheme.

The design and layouts are currently under development (please see overleaf); the designs so far are focused around a 'village green' with a children's play area, wild planting areas, swift boxes and an existing oak tree. Due to the site's excellent public transport links, the development will promote a low-car/low-carbon lifestyle with electric vehicle charging and plentiful bike parking, refuse and recycling areas.

#### We welcome your views

Due to the Covid-19 restrictions, we will be hosting two online engagement events via Microsoft Teams. All engagement will take place prior to the submission of a full Planning Application to ensure your views are heard and considered as part of the proposal. The engagement events will take place:

- Monday 26<sup>th</sup> April at 6:00pm - 7:00pm;
- Wednesday 28<sup>th</sup> April 2021 at 6:00pm - 7:00pm.

Please confirm your attendance by emailing [Housing.development@bromley.gov.uk](mailto:Housing.development@bromley.gov.uk) with the reference 'York Rise Planning Application' and preferred date.

Further information will also be provided online at <https://www.rivingtonstreetstudio.co.uk/projects/housing/york-rise/>

We will keep you informed at each stage of this scheme providing regular updates on the works that are taking place.

Yours faithfully,

The Regeneration Team  
Housing, Regeneration and Planning  
London Borough of Bromley  
Civic Centre, Stockwell Close, Bromley BR1 3UH



rivingtonstreetstudio

Director: Sara Bowrey

## 22.4. Appendix D- Proposed scheme design

### 22.4.1 Below figure of the terrace proposed, west elevation



22.4.2 Below figure of apartments proposed north elevation



### 22.4.3 Current site layout

