

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet **DATE:** 13th July 2020

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WARD(S): All

PORTFOLIO: Housing & Community Safety, Councillor Nazir

PART I **NON-KEY DECISION**

TOWER & ASHBOURNE DESIGN UPDATE AND PROCUREMENT FOR CONSTRUCTION

1. Purpose of Report

To advise Cabinet of the Tower & Ashbourne design, of the total commitment to affordable housing, and that the Council is considered the first Council in the country able to deliver the design, SMART TECC building technology, an exemplar approach in standards of fire prevention measures.

Cabinet are invited to review a brief presentation that provides key insight into the advanced stage of detail design in preparation for procurement and which is offered as an illustration of how the team have looked to a resident and community focused SMART TECC design, which is exemplar of levels of fire safety and community safety, landscaping and communal space that seeks to create a basis for community and tenant engagement as a part of the principles within the construction program.

2. Recommendation(s)/Proposed Action

The Cabinet are requested to resolve:

- a. That based on robust and commercial engagement measures in place with contractors, the objective is to procure a 'Fixed Price' for the construction of the Tower & Ashbourne development and that Cabinet accept that the recommended method to achieve this objective is via the 'Restricted Contract Procurement Route'; .
- b. That the Director of Finance & Resources in consultation with the Lead Member and with support from Service Lead Housing Development & Contracts, explore and agree, if he considers appropriate, the option for the Housing Revenue Account (HRA) to fund the construction of the development work;
- c. That once construction is sufficiently established, the development will be refinanced and an option of 'Heads of Terms' be in place allowing for Institutional Funding to re-imburse the HRA to invest in other projects..

- d. That the Cabinet consent to the principle that the tenancy strategy for for the development is to set affordable rents and these are required to be below the Local Housing Allowance (LHA) level, that the rents are set at the lowest possible level below LHA as a clear intent that the Development is is 'Affordable Housing' that there be active use of available retained 1-4-1 RTB Receipts and s106 Housing funding or successful application for Homes England Grant to reduce further the rent levels to lowest possible viable level; and
- e. That HRA Asset Strategy & Support of Tenancy Strategy is to designate the DI.S.H. RP (Development Initiative Slough Housing RP) to commission services for the management of the completed Development and, to be the designated Building Safety Body, to enable planning requirement for localised letting so as to create active tenant engagement in the management and creation of a sustainable community at the Development.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

3a. **Slough Joint Wellbeing Strategy Priorities**

The provision of new good quality and affordable housing can reduce housing need for local households and contributes to the identified priorities of the JSNA. The development of Tower and Ashbourne and principle of tenant engagement with management of their homes and sustaining their community will improve the safety, health and well-being of the tenants.

3b. **Five Year Plan Outcomes**

The provision quality affordable housing at Tower & Ashbourne to deliver innovative pathfinder design and use of SMART TECC building technology and exemplar approach in standard of fire prevention measures offers a national benchmark for affordable housing underpinning objective 4 'Our residents will live in good quality homes'

4. **Other Implications**

(a) **Financial**

The objective is to undertake a 'restricted Procurement Route as a method to establish a fixed price, whilst the detail is commercially sensitive we would wish for bids below £48m. Whilst previous reports to cabinet have established the viability of the development and the credible options for Institutional Funding. The option for the HRA to fund the initial two-year construction period removes any doubt that the development can progress. With committee approval, the HRA can progress with measures within governance and prudential borrowing criteria that enable the funding to be in place if required in 2022.

The Council in conjunction with Savills has undertaken various financial viability analyses to ensure that the development is financially manageable over the life of the funding at affordable rents. As well as identified Institutional Funding to support the build cost of £48m, modelling has taken into account rent levels based around Slough Living Rent (but below LHA) with, if required, one off funding from a mixture of grant, retained 1-4-1 RTB receipts and other available HRA sources. Recent detailed research by Savills on the maintenance

requirements of the building(s) has concluded that £2k per unit per year is sufficient which supports the £2.5k/unit/year Management & Maintenance allowances used in the analyses.

(b) Risk Management

Recommendation from section 2 above	Risks/Threats/ Opportunities	Current Controls	Using the Risk Management Matrix Score the risk	Future Controls
<p>a.The committee agree that based on robust and commercial engagement measures in place with contractors, the objective is to establish a 'Fixed Price' for the construction of the Tower & Ashbourne development. That the committee accept that the recommended method to achieve this objective is via the 'Restricted Contract Procurement Route'.</p>	<p>The opportunity arises as the current economic impact on the construction industry presents the Council Development an attractive offer to market due to the certainty of funding, the accompanying detail design and robust specification.</p>	<p>The detail design and robust specification and method of tender allow control throughout the process. The time line are intended to match CPO where contract will be factor award and start date</p>	<p>Low Risk 9</p>	<p>Continue with current control measures and ensure procurement is coordinated with CPO . process. This will continue to form basis of weekly operational program discussion and monthly engagement with Service Lead and wider group</p>
<p>b. The Committee provides approval for the Director of Finance & Resources in consultation with the Cabinet Member and with support from Service Lead Housing Development & Contracts, to explore and allow the option for the Housing Revenue Account (HRA) to fund the construction of the Development work. Once construction is sufficiently established, the committee approve the development will be refinanced and consent to option of</p>	<p>The HRA Business 30 year Business Plan has the capability and capacity to borrow. This opportunity is measured that it is appropriate for short term as this capacity may be better focused on long term investments for provision of specialist accommodation. However, these schemes are phased that as institutional finance is accessed it release HRA funding capacity.</p>	<p>There are robust prudential and treasury measures in place</p>	<p>Low Risk 9</p>	<p>The process of procurement will establish a fixed price. The outcome of the CPO process will determine the programing of the development. Therefore the HRA funding through these imponderables will offer a robust position to negotiate definitive funding requirements and with an environment of such certainties a lower rate would be</p>

<p>'Heads of Terms' to be in place allowing for Institutional Funding to reimburse the HRA to invest in other projects.</p>				<p>expected from Institutional finance Funders</p>
<p>c. That the committee consent to the principle that the tenancy strategy for T&A is to set affordable rents and these are required to be below the Local Housing Allowance (LHA) level. The committee consent to setting rents at the lowest possible level below LHA as a clear intent that T&A is 'Affordable Housing'. That committee require the active use of available RTB Receipts, s106 Housing funding or successful application for Homes England Grant to reduce further reduce the rent levels to lowest possible viable level.</p>	<p>Homes England grant assessment and expectations as to national rent framework have in the past presented a challenge. This recommendation is intended to seek the same outcome of delivering the lowest level of rent and highest level of Homes England Grant. Thus any deflection as to historical rent setting interpretation are addressed thus allowing the focus on the need and merits of Homes England partnering with the borough to deliver affordable new homes</p>	<p>The Local Housing Allowance is not an SBC and is based by regional and national level by an external body. This in effect determines the cap on benefit and indicator as to affordability. The determination of rent setting is by the Council; and the objective will remain as the delegation is to seek grant and support to deliver new homes at an affordable rent for Slough.</p>	<p>No funding from Homes England will have a critical impact In delivering traditional affordable rented new homes 18</p>	<p>Homes England Partnering and Development Appraisal arrangements f</p>
<p>d. HRA Asset Strategy & support of Tenancy Strategy is to commission the DISH to provide and commission the management of the Asset, to be the designated Building Safety Body, to enable planning requirement for localised letting so as to create active tenant engagement in the management and creation of a sustainable community at Tower&Ashborne.</p>	<p>The recognition of the DISH RP as preferred provider of management and asset services ensures that the Institutional Funders will not seek to source alternatives or seek to determine the level or quality of service expected in the borough</p>	<p>The DISH RP is a council initiated body with councillor board representation and Service Lead Housing Development & Contract as designated lead operating officer The commission of council services subsequent income allow opportunity and in built control measures</p>	<p>Low Risk 9</p>	<p>The DISH is recommend to develop HRA stock as part of 21 year leaseback , sustaining the affordable housing stock for rent and sustain good quality homes through the DISH loan & service agreements and commissioned arrangement of services.</p>

(c) Human Rights Act and Other Legal Implications

The Council are seeking to acquire the outstanding leasehold interest in Ashbourne House compulsorily to enable the proposed development to proceed. This has the potential to engage the right of every natural or legal person to the peaceful enjoyment of his possessions enshrined in Article 1 of the First Protocol to the European Convention on Human Rights which provides that no person shall be deprived of his possessions except in the public interest and subject to the conditions provided by law, which is given effect to in domestic law by the Human Rights Act 1998. This Article 1, however, expressly provides that it does not impair the right of any state to enforce such rights as it deems necessary to control the use of property in accordance with the general interest and hence the acquisition of this interest by the Council will be achieved in full compliance with statutory compulsory purchase powers available to the Council.

The proposed development also has the potential to engage the prohibition against slavery and forced labour contained in Article 4 of the European Convention on Human Rights which is also given effect to in domestic law by the Human Rights Act 1998. The Council will, therefore, ensure that any contractors procured to carry out the Development or engaged in the development comply with the provisions of the Modern Slavery Act 2015.

Under Section 9 in Part 1 of the Housing Act 1985 a local housing authority may provide housing accommodation by erecting houses, or converting buildings in to houses, on land acquired by the authority for the purposes of that part of that Act. Section 12 of that Act empowers a local housing authority, with the consent of the Secretary of State, to provide and maintain in connection with housing accommodation provided by them under Part 1 of the Act, buildings adapted for use as shops, recreation grounds and other land or buildings which, in the opinion of the Secretary of State, will serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided.

Under Section 13 of that Act a local housing authority may lay out and construct public streets or roads and open spaces on land acquired by them for the purposes of Part 1 of that Act.

Under Section 24 of the Housing Act 1985 the Council may make such reasonable charges as they may determine for the tenancy or occupation of their houses and must review rents from time to time and make such changes, either of rents generally or of particular rents, as circumstances may require. The Council must have regard to government guidance and the Rent Standards set by the Regulator of Social Housing, when setting rents.

Any contract to effect the proposed development would be a public works contract regulated by the Public Contracts Regulations 2015. Under those regulations the Council must treat all potential contractors equally and without discrimination and must act in a transparent and proportionate way. The procurement must not be designed in a way that artificially narrows completion and for this purpose competition is considered to be narrowed if the design is made with the intention of unduly favouring or disadvantaging certain potential bidders. Under these Regulations Contracts must be awarded to the most economically advantageous tenders assessed from the point of view of the Council. Under Regulation 26 of the Regulations the Council may apply open or restricted procedures as regulated by the Regulations. In open procedures any potential contractor may submit a tender

in response to a contract notice published under the Regulations and under restricted procedures any potential bidder may submit a request to participate in response to a call for competition by providing the information for a qualitative selection that is requested by the Council.

(c) Equalities Impact Assessment

The Cabinet report on the 16th December 2019 outlined the implication of Tower & Ashbourne in respect to S149 of the Equalities Act 2010 created the public sector equality duty. S149 states that a public authority must, in the exercise of its functions have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

An Equalities Impact Assessment has been undertaken and concludes that the scheme would not constitute a breach of the Council's obligations under s149 of the Equalities Act 2010.

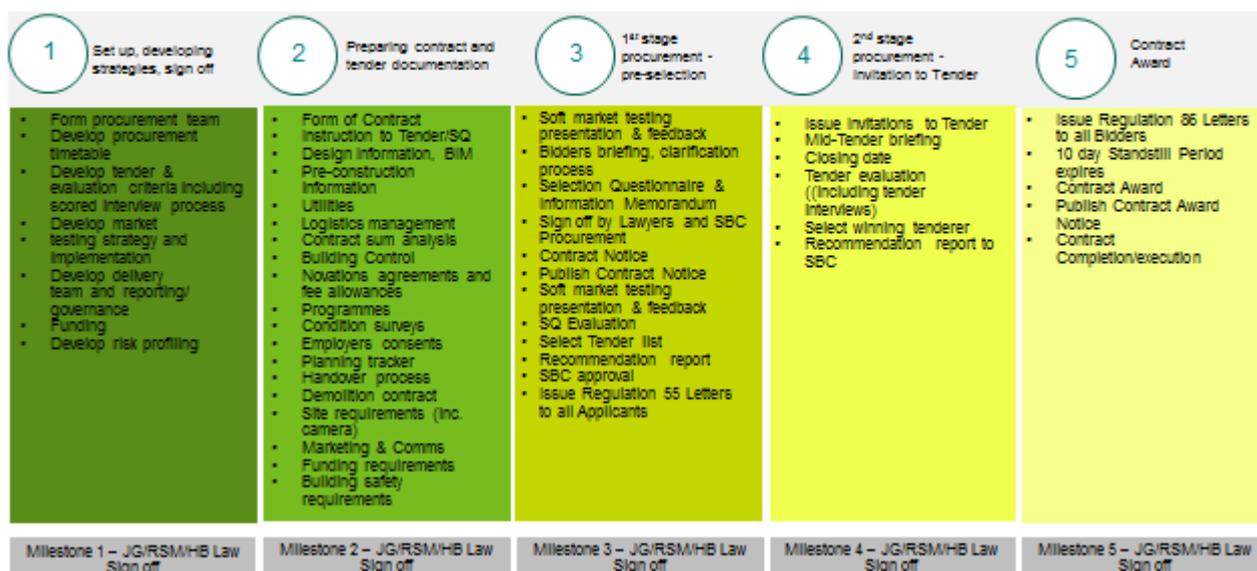
5. Supporting Information

Tower and Ashbourne redevelopment procurement proposal have a full set of stage 3+ RIBA Designs Standards developed across all disciplines, reducing risk of contractor exclusions or clarifications at tender stage. This is accompanied by a robust set of 'Employers Requirements' ensuring that the exemplar standards of the design are maintained with mitigating the opportunity of contractor deviation.

The upcoming introduction of the Building Safety Act, places a responsibility of being able to demonstrate competency in design, that from the outset contractors are interviewed as part of the qualification process to assess competencies in being able to meet the regulations these responsibilities remain for the life cycle of the building. The process of procurement of construction is evolving to meet the responsibilities to the act. The principles are that responsibility during the construction phase has responsibilities to those that manage and in turn, these responsibilities are to ensure compliance and safety during occupation. It has evolved beyond task and finish and the whole process we propose is procure , program manage and deliver from construction to engaging with residents during phase of occupancy and offer beyond new homes to offer a compliant and safe sustainable community for residents.

As stated the key is to ensure from the outset the selection of a contractor to work in partnership and detailed roadmap to contract has been produced and illustration below showing each stage of procurement leading up to contract award. Including requirements for face-to-face interviews/ engagement with contractor pre-selection.

Tower & Ashbourne - Procurement Roadmap



The process is supported through governance and risk register that has been produced and costed against stages of the project supports the project. This has included 'Life Cycle Costing' exercise carried out to demonstrate the benefits of Smart TECC in reducing projected maintenance costs to below the HRA average of £2,600 per unit per year.

By using the restricted procurement route we will be able to ensure that all interested parties are part of a pre-qualification to the first stage of the process, only suitably qualified tenderers being taken forward, increasing the likelihood of getting better quality and more detailed submissions from the tendering parties. Within Councils open procurement route, the current construction marketplace may be challenged in offering detailed responses to cover all elements of risk management, building safety regulations and social value. There are a large number of contractors in the market place seeking opportunities due to the current downturn and assessing their ability to deliver a project of this size is critical at the earliest stage of the process, as allowed by the recommended procurement model the 'restricted route'.

Clarifications from potential contractors are able to be dealt with at multiple stages before the final submission, we are able to do this will all potential tenderers at the initial briefing, and from the reduced number who pre-qualify both through written clarifications and also via a Mid Tender interview process. A further interview process held and scored as part of the final post submission process. This will allow the opportunity to ensure the competence not only of the business, but their individual members of staff in being able to deliver a High Rise Residential Building and commitment to engagement with the future community.

The interview process will also allow the addition of a community representative to demonstrate commitment to listening to the residents' voices from start to finish of the process, identified as a failing by the Hackitt report.

The submitted tenders in combination with the interview process will allow the proceeding of a design and build contract where the Design risk is passed to the

contractor but removing their ability to make changes that will lower the quality or specification of the project.

The adoption of a rigorous procurement route focused on providing better quality and detailed tenders will enable the Institutional Funder to perform its own due diligence. This will provide the Institutional Funder with the assurances that it will need that its investment of c.£48m will provide it with the yields and guarantees over the life of the funding agreement, and satisfy its own internal approval processes. In conjunction with this, it will also ensure that the affordable rents paid by the new tenants and the maintenance regime needed can all be accommodated within the finalised construction costs of the development.

In approving the recommendation that the committee consent to the principle that the tenancy strategy for T&A is to set the lowest possible affordable below the Local Housing Allowance (LHA) level. The committee consent to setting rents at level that clearly identify these new homes are dedicated to provision of 'Affordable Housing'. The committee requiring the active use of available RTB Receipts, s106 Housing funding or successful application for Homes England Grant to reduce further reduce the rent levels to lowest possible viable level and DISH RP is further unequivocal evidence of a commitment to sustainable affordable housing redevelopment at Tower & Ashbourne.

6. **Comments of Other Committees**

For information, the committee are advised that the current report compliments previous reports on the proposal for the redevelopment Tower & Ashbourne in December and November 2019 and January 2018.

7. **Conclusion**

The reports sets out the procurement route intended to achieve best value with a partnering contractor that has to engage with design – construction – resident occupancy – sustainable compliant safe community.

Offering a commitment to delivering SMART TECC affordable housing that offers pathfinder status in the sector.

8. **Appendices Attached**

'A' - Design & Innovation Presentation Slides

'B' - SBC Tower & Ashbourne Procurement Workshop

9. **Background Papers**

None.