

Report for: Cabinet

Date of Meeting:	15 July 2021
Subject:	Homes for Harrow: Council House Building for Londoners Programme – Airspace Development
Key Decision:	Yes The matter is key by virtue of Financial/Budget considerations because it will involve capital expenditure in excess of £1m
Responsible Officer:	Julian Higson, Interim Divisional Director Housing Services
Portfolio Holder:	Cllr Philip O'Dell, Portfolio Holder for Housing
Exempt:	Public with Exempt Appendix 1 by virtue of Paragraph 3 of Schedule 12A of the Local Government Act 1972 as it contains information relating to the financial or business affairs of any particular person (including the authority holding that information)
Decision subject to Call-in:	Yes
Wards affected:	Edgware
Enclosures:	Appendix 1: Legal Risks and Advice (exempt) Appendix 2: EqIA

Section 1 – Summary and Recommendations

This report seeks approval to progress a pilot airspace development scheme with Apex Airspace Limited (“Apex Airspace”) to provide additional council housing above existing blocks of flats owned by Harrow Council.

Recommendations:

1. Approve progression of this pilot project to lease the airspace above existing council properties on the Berridge estate at a peppercorn rent to Apex Airspace Limited who will seek planning permission to construct new homes with the intention that the council be offered first refusal to buy the homes constructed in the airspace for letting on secure council tenancies;
2. Delegate authority to the Corporate Director Community following consultation with the Portfolio Holder for Housing, the Director of Finance and S151 Officer and Director of Legal and Governance Services to finalise and enter into the legal documents which are summarised in paragraph 2.3.5 of this report;
3. Delegate authority to the Corporate Director Community following consultation with the Portfolio Holder for Housing and the Director of Finance and S151 Officer to exercise the option to purchase and proceed to purchase the new homes that are constructed from Apex Airspace provided the cost is within the agreed capped price set out in the Legal documents. and which will be no higher than the average maximum price per home currently approved within the Building Council Homes for Londoners programme
4. Note the intention to recommence consultation with estate residents on the proposals.
5. Delegate authority to the Corporate Director Community following consultation with the Portfolio Holder for Housing to consider the consultation outcomes and agree proposals to meet residents’ suggestions such as those set out in section 3 of the report.

Reason: To enable the delivery of new council homes

Section 2 – Report

2.1 Introductory paragraph

It is a key council priority to deliver new council homes, making a difference in Harrow by increasing the supply of affordable housing to meet the needs of vulnerable households and families who cannot afford market housing. In February 2019 the council approved a new council house building programme, funded through a successful grant funding bid to the GLA and Housing Revenue Account (HRA) resources. This proposal will enable the delivery of new council homes under that programme.

2.2 Options considered

The options considered are:

1. Enter into the proposed legal documents with Apex Airspace to take forward a pilot modular construction airspace development. This is the preferred option.
2. Not pursue the pilot proposal with Apex Airspace and consider an alternative solution. This would be the council writing a performance specification and then competitively selecting a contractor. This would require the council to undertake all the initial design and technical work using consultants and would not benefit from the grant funding that Apex Airspace has secured from the GLA. This option has therefore been rejected for the pilot scheme but could be pursued for additional airspace projects.

2.3 Background

- 2.3.1 The council has approved an ambitious programme to build new council housing to meet the housing needs of priority households who cannot afford market housing. There is a limited supply of vacant land within the council's HRA to build new homes but opportunities have been identified for an airspace development (roof top extensions) on top of an existing 3 storey block of flats.
- 2.3.2 The Berridge estate (Buckingham and Whitchurch Avenue) comprises 12 blocks (6 double blocks) with a total of 144 flats (a mixture of 1 and 2 bedroom). A feasibility report for the construction of an additional storey to an existing three storey residential block of flats at the Whitchurch Avenue / Buckingham Avenue Estate, Edgware was undertaken in 2017. It concluded it was feasible and cost effective to adapt and vertically extend an existing block archetype in order to create additional residential accommodation. A consultation was also undertaken with residents about the principle of adding an additional floor although it was not possible to provide specific details of how it would affect residents during construction. However, the scheme could not be progressed at that time as there was no funding available.
- 2.3.3 Roof top development is relatively new, responding to the need for additional housing in London where there is shortage of land. Developments in different types of modular construction have brought forward lightweight construction, either partially or fully constructed off site which increases the opportunities for roof top development. Apex Airspace is a new company specialising in modular roof top extensions and has financial support from the GLA to deliver new homes, including affordable housing.
- 2.3.4 As a result of the GLA funding, Apex Airspace is able to finance the development of the preliminary due diligence stage of the proposed development, taking on the responsibility for the technical assessments and making the application for planning permission. However, the company requires additional funding from a senior lender in order to carry out the construction of the new homes and will seek such funding at a later stage of the project. Subject to satisfaction of various conditions, the council will grant a lease of the airspace to Apex Airspace

with an option for the Council to buy the completed homes once constructed. The purchase price of each of the new homes will be the cost of construction plus agreed developer profit but subject to a price cap on a per home basis (to be agreed between the parties and will be the maximum sum payable by the Council for the new homes) and funded with a combination of grant and HRA resources already identified within the approved Homes for Harrow programme. The completed homes will then be owned by the council and let on secure council tenancies to households in priority housing need.

2.3.5 The council will enter into the following documents with Apex Airspace:

- a. Agreement for Lease – this document sets out various conditions which need to be satisfied before the build lease of the airspace can be granted by the council to Apex Airspace:
 - (i) **Planning** – Apex Airspace to apply for (but is not obliged to) planning permission for the development and construction of new flats within the airspace, and for a satisfactory planning permission (with no adverse conditions) to be granted.
 - (ii) **Funding**- Apex Airspace to seek and secure senior funding for the development costs in order to carry out the build from a lender(s) approved by the Council, and subject to the lender(s) agreeing to enter into an intercreditor agreement with the GLA allowing the GLA a priority right to step in if Apex Airspace become insolvent.
 - (iii) **Due diligence** – Apex Airspace to carry out legal and technical due diligence, including having site access to carry out necessary surveys, to design the scheme and to establish whether the development is viable financially.
 - (iv) **Secretary of State consent** – Secretary of State consent is required to grant the lease to Apex Airspace. The Council is to apply for and obtain Secretary of State consent (with no adverse stipulations) to the grant of the build lease pursuant to the Housing Act 1985.
 - (v) **Costs of the homes** – the parties to agree on the price cap of the residential units to be constructed during the development.
- b. Build Lease - satisfaction of all of the above conditions (i)-(v) by a certain cut-off date (this date to be agreed between the parties) will trigger the grant of a build lease of the airspace to Apex Airspace so they can construct the new homes;
- c. Option Agreement - this document will be completed at the same time as the build lease and provides that on practical completion of the new homes this will trigger the option to purchase, therefore, allowing the council the opportunity to purchase the new homes at the total construction cost including agreed developer profit subject to the price cap. If the council decides not to exercise its option to purchase, it is proposed that the Council will surrender the build lease and grant to Apex Airspace a new long lease to enable the homes to be disposed

of. As the planning permission would be for 100% affordable housing, and subject to a section 106 agreement setting out the affordable housing obligations, the homes could only be disposed of for that purpose unless Apex Airspace apply to vary the planning permission by a separate section 73 application, which will also involve the variation of the section 106 agreement.

On disposal of the homes to another party the Council would be entitled to overage where profit exceeds the agreed total construction cost plus 20% of the aggregate sales proceeds.

- d. Deed of Assignment – On completion of the purchase of the new homes Apex Airspace will assign the build lease back to the council.

2.3.6 The benefits of the proposal with Apex Airspace will be the involvement of a specialist in modular rooftop extensions from an early stage to take forward an exciting pilot project in Harrow with limited financial input from the council in the initial stages. It could also be an exemplar model for private airspace development in the borough.

2.3.7 In 2019 and prior to Covid, Apex carried out considerable feasibility work at risk, to consider specific technical issues, such as the design and installation of a temporary roof on the blocks to ensure that existing flats are protected during construction and residents can remain in occupation. Initial designs were presented to residents and a pre-application meeting with Planning Services was held. The current proposals are for roof top development combined with some infill. To enable the final technical due diligence to be completed by Apex Airspace and for the project to be progressed, they need in principle approval to the proposal and legal documents

2.3.8 The project was delayed as a result of Covid but negotiations over the proposed legal documents have continued and whilst the legal risks have now been discussed, the legal documents remain outstanding and need to be finalised and agreed whilst the technical assessments progress.

2.3.9 Once the legal documents are signed, Apex Airspace will complete detailed surveys and technical assessments and progress the planning application. There will be further consultation with residents throughout this process and we anticipate that a Resident Steering group will be set up. As Covid restrictions ease we hope this can be through a combination of on-site consultations as well as virtual consultations using the Commonplace platform. Apex Airspace have specialist consultation staff who will manage the consultation and engagement alongside the council.

2.3.10 Apex Airspace will be responsible for developing and obtaining appropriate approval of all health and safety matters relating to the proposals and the council will have these independently reviewed to ensure the health and safety of our existing residents.

3. Consultation

All council house building proposals are consulted on with local residents and ward councillors at the start of the design process and before a planning application is submitted and changes made as a result of resident feedback.

A consultation event was held on the 22 October 2019 to which all estate residents were invited. A total of 17 households - approx. 32 residents attended the event. In addition, representatives from the TRA and HEFTRA also attended. A separate meeting was held with a top floor leaseholder who couldn't attend the event.

The event was in general positively received with some issues raised regarding the proposals and some relating to current estate issues.

This was the second time a consultation has been held regarding roof development; one having taken place in 2017. The main points raised during the 2019 consultation were.

1. Parking issues (mainly caused by non-resident use of the estate parking spaces)
2. The desire to be consulted throughout the planning process
3. Refuse management and collection
4. Disturbance during the build process
5. Request for an elevator be installed for less mobile tenants
6. Change of dynamics of the estate by the addition of new tenants
7. Lack of play areas for children (although they did not want the old playground re-instated due to ASB)
8. Poor estate lighting
9. Vermin issues in some blocks
10. Could the current tenants move to the new flats when completed?

With regard to point 10 above, there was a strong feeling among the tenant residents that they should have first refusal on the new flats especially if they currently reside on the top floor. In addition, some resident leaseholders may want to swap to the new top floor or sell their properties to the council.

In response to the consultation 2019, officers propose to consider:

- That existing secure tenants are offered the option to move into the new flats, and the flats they vacate are then let to households on the Housing Register;
- That an option for resident leaseholders to "swap" their equity and move into a new flat be investigated, their vacated flat then being relet to households on the Housing Register;
- That a parking permit scheme be pursued

Due to Covid-19 there have been delays in progressing further consultation with residents. A letter has been sent to all residents to explain the position

and we will be relaunching consultation to all residents on the proposals once we have confirmation to proceed with the project.

Ward Councillors' comments

Meetings were held with Ward Councillors on the 21st and 23rd June. They want to ensure that residents are fully engaged in developing the proposals and that the concerns raised at the 2019 consultation are addressed. They want to ensure that existing residents receive some benefits as a result of any development such as improvements to some bin stores, tackling fly tipping and parking issues and provision of social value contributions to be agreed with residents. They are positive about the proposal to provide additional affordable housing, including 2 bed plus homes for families and the innovation of modular construction.

Performance Issues

This project contributes to delivery of the Homes for Harrow programme and the specific delivery targets agreed with the GLA for Harrow's Council House Building for Londoners Programme, the council's target to deliver at least 500 new council homes as well as the overall affordable housing targets set out for Harrow in the London Plan. Failure to take the project forward would jeopardise achievement of the above targets and potentially result in grant funding not being taken up.

Environmental Implications

All new homes have to meet high standards of energy efficiency to reduce CO2 emissions as well as reduce fuel poverty as required by the London Plan.

This scheme is proposed to be modular construction with the new homes being mainly constructed off site reducing construction time and impact on the environment. The new homes will have to meet current London Plan carbon reductions and we will work with Apex Airspace to see what can be achieved to improve the energy efficiency of the existing homes on the estate.

Data Protection Implications

There are no GDPR implications.

Risk Management Implications

Risks included on corporate or directorate risk register? **No**

Separate risk register in place? **Yes - being prepared**

The relevant risks contained in the register are attached/summarised below.
Yes

The following key risks should be taken into account when agreeing the recommendations in this report. There are also legal and financial risks covered in more detail in the Legal Implications and Financial Implications sections of this report as well as in Appendix 1:

Risk Description	Mitigations	RAG Status
Apex Airspace does not progress a planning application in a timely fashion	The Agreement for Lease will have a time limit by which all the conditions, including obtaining a satisfactory planning permission, must be satisfied, otherwise, the agreement falls away and the council is not obliged to enter into the Build Lease	
Existing residents object to the proposals	<ul style="list-style-type: none"> ▪ There will be ongoing consultation with residents and opportunities identified to manage concerns especially on the construction impact. 	
Apex Airspace does not construct the new homes	<ul style="list-style-type: none"> ▪ The Build Lease will be for a fixed term. If the homes are not built within the term, it will end 	
Apex goes into receivership mid-way through construction and their lender steps in	<ul style="list-style-type: none"> ▪ An independent assessment of the project costs and due diligence on Apex Airspace once planning application submitted and before build lease is entered into ▪ An independent assessment of the proposed senior Lender before the council approves them (condition under the AfL) ▪ The GLA also has step in rights and will work with the Senior Lender and the council to ensure the new homes can be completed as affordable housing ▪ The GLA/Senior Lender step in and the council may have to fund the development to be completed. The Senior Lender would have been approved by the council. The planning permission will be for a 100% affordable housing scheme. The council would still have the approved funding set aside for the project, including grant to utilise instead of paying Apex. 	
Construction is delayed because of limited capacity in the modular homes market	<ul style="list-style-type: none"> ▪ Apex Airspace have a solid supply chain and are on site with other projects 	
The total construction cost is not affordable to the council	<ul style="list-style-type: none"> ▪ The total construction cost including developer profits will be agreed and capped within the Legal Agreements. An independent assessment of the scheme costs will be undertaken. ▪ The council is not obliged to purchase the completed homes. However the new homes will have planning permission as affordable 	

Risk Description	Mitigations	RAG Status
	<p>homes therefore the purchaser will have to buy and ensure they are available for that purpose</p> <ul style="list-style-type: none"> ▪ Grant for the project is already allocated to Harrow under the Building Council Homes for Londoners programme. 	
Disturbance to existing residents during the construction phase	<ul style="list-style-type: none"> ▪ There will be some unavoidable disturbance as there is with any construction or improvement works. This will be discussed with residents. Mitigations might include: Agreed hours of work and when certain works would be undertaken, compensation or reinstatement if existing flats affected internally, refuge space provided during the day. 	
Health and Safety during construction	<ul style="list-style-type: none"> ▪ There will be a full CDM management plan in place before construction, a construction phase plan, monitoring of works on site by specialist consultants, independent inspections of on-site health and safety and Building Control Inspections 	
The quality of completed homes is poor because the council is not designing, specifying or contract managing delivery of the new home	<ul style="list-style-type: none"> ▪ Independent assessment of the technical proposals and assurance they will not adversely impact the structure of our existing buildings ▪ Under planning requirements set out in the London Plan relating to the minimum quality of homes, Building Regulations and GLA funding obligations there will be mechanisms requiring the homes to meet high quality standards. ▪ Apex will also be obliged to ensure that homes have the benefit of NHBC/LABC warranties at completion. 	

Procurement Implications

The procurement implications of the proposal have been carefully considered and as this is a land transaction, as opposed to a public works contract under the Public Contracts Regulation 2015 (PCR), the transaction is exempt from the competitive tendering requirements set out in the PCR under Regulation 10 (1) (a). This is because under the legal agreements there is no binding obligation on Apex to carry out the construction works, the council will not be specifying or commissioning the construction works, and while the council has an option to acquire the homes when built it is not bound to do so.

Therefore, the council can enter into the transaction directly with Apex Airspace without conducting a regulated procurement process. Counsel

opinion on this matter has been provided and further details are included in the exempt appendix.

Legal Implications

A summary of the key legal risks of this project with Apex Airspace is set out in Appendix 1: Legal Risks and Advice

The title of the existing council buildings on the Berridge estate will need to be reviewed in detail and all occupational leases for private tenants and council secured tenants should be investigated to establish any rights that may be affected by the proposed development, including all services.

Pursuant to the Housing Act 1985, a disposal of airspace is ultimately the disposal of HRA land and accordingly, if the project does not meet one of the deemed consent provisions, the grant of the Build Lease will need Secretary of State consent. This is one of the conditions set out in the Agreement for Lease.

Consideration will need to be given as to the future interrelationship with the existing service charge arrangements for the current buildings and the new dwellings to be constructed.

The financial strength of Apex Airspace and the consequences of their insolvency must be considered. The Council does not want to be left with a partial build on top of social housing, nor be burdened by a long lease which a funder seeks to exercise any step-in rights or assign to a third party. As the GLA is providing some funding to this project they will enter into an intercreditor agreement with the senior lender which allows the GLA to step in to ensure the affordable housing is delivered. The risk is also mitigated by the intention that the planning application and permission will be for 100% affordable housing. This means a funder could not dispose of it for market sale (without varying the planning permission) and therefore the sales market would be restricted to affordable housing providers.

Financial Implications

The Homes for Harrow: Building Council Homes for Londoners (BCHfL) Programme was approved by Cabinet on 21st February 2019 to build a total of 659 new council homes at a total cost of £171.163m funded by grant of £42.144m, with the remainder from HRA resources (RTB receipts, borrowing and other HRA resources) of £129.019m. Since then Cabinet has approved a revised lifetime increase in the budget due to increased development and construction costs. The total revised lifetime budget is now £194.609m with an average total development cost per home of £325k, funded by grant of £42.144m and the remainder from HRA resources totalling £152,465m (RTB receipts, borrowing and other HRA resources). This funding plan is reflected in the Council's three-year Capital Budget.

The costs of the BCHfL programme were estimated based on the build and on-costs achieved on completed schemes to date. Each scheme, including the Airspace project, within the programme has an estimated budget allocation. At this stage, the viability of the Airspace project will need to be assessed as it is progressed. Should the scheme be progressed to development it will be funded from the resources identified in the Council's three-year Capital Budget.

Upon completion, if the units remain within the total development cost per home of £325k, the new homes will be affordable within the Council's HRA. The homes will be owned within the council's HRA and let on secure tenancies at London Affordable rents.

There is no anticipated impact on current service charges for existing residents as costs will be spread across a larger number of residents, unless additional services are provided as agreed with residents.

There is a benefit to the overall programme of the lease and construction approach of this project. Normally the council would be paying design and consultancy costs up front and at risk to obtain a planning permission and then making stage payments to a contractor during the construction of the homes. With this proposal the council does not make any payments until the homes are complete and full rental income will come in shortly after practical completion. This improves affordability within the programme by ensuring new borrowing exposure is minimised.

The council is under no obligation to purchase the completed homes if it is not able to do so. However, this would be very much a last resort as the council would wish to retain ownership of the new homes.

This will be a 100% affordable housing scheme and if Apex Airspace should become insolvent during the construction of the scheme, the GLA who are providing some funding to this scheme, will step in to ensure the affordable housing is delivered.

Any abortive costs arising as a result of the scheme not going ahead, will be absorbed by Apex Airspace and if the council is required to make a contribution, this will be funded from within the HRA.

Equalities implications / Public Sector Equality Duty

The Housing Strategy EQIA completed in 2013, informed the development and adoption of the Homes for Harrow programme. The provision of additional affordable housing has an overall positive impact on a number of protected characteristics. The Housing Strategy was updated and adopted in 2019, and a new EQIA was completed. This Strategy has a key priority to increase the supply of affordable housing and this will have a positive impact on a number of protected characteristics.

A project specific EQIA has been completed for this project which considers the impact on existing residents of the estate on which the new homes are to

be constructed and on the needs of those on the Housing Register who would be able to bid for the completed homes and which is attached at Appendix 2.

The provision of additional affordable housing for rent will have a positive impact on groups with the following protected characteristics in view of the diversity profile of those seeking social housing: race/ethnicity and sex.

The project will potentially have short term negative impacts on the existing tenants and leaseholders of the blocks during the construction phase due to the works needed to carry out the project and the associated disruption. This impact will vary but may particularly impact those in the protected characteristic groups of age and disability.

When planning the installation of the new homes, consideration should be given to the potential disruption to all residents. Mitigations might be avoiding some works being carried out at particular times, provision of a refuge space during some elements of the construction, a Resident Liaison officer in close contact with individual residents as well as providing advance notice of work.

Council Priorities

Please identify how the decision sought delivers these priorities.

1. **Improving the environment and addressing climate change** – the new homes will be built to meet the carbon reduction targets contained within the London Plan
2. **Tackling poverty and inequality** – The new homes will be affordable and available to those on the Housing Register, including those who are homeless
3. **Building homes and infrastructure** – the new homes contribute to the council's overall house building targets as well as its targets to increase the supply of affordable housing
4. **Addressing health and social care inequality**
5. **Thriving economy**

Section 3 - Statutory Officer Clearance

Statutory Officer: Dawn Calvert

Signed by the Chief Financial Officer

Date: 5 July 2021

Statutory Officer: Matthew Dineen

Signed on behalf of the Monitoring Officer

Date: 7 July 2021

Chief Officer: Mark Billington

Signed off by the Corporate Director

Date: 5 July 2021

Head of Procurement: Nimesh Mehta

Signed by the Head of Procurement

Date: 30 June 2021

Head of Internal Audit: Susan Dixon

Signed by the Head of Internal Audit

Date: 5 July 2021

Mandatory Checks

Ward Councillors notified: YES

EqlA carried out: YES

If 'NO' state why an EqlA is not required for Cabinet to take a decision

EqlA cleared by: In progress

Section 4 - Contact Details and Background Papers

Contact: Alison Pegg, Head of Housing Regeneration, Mobile Tel: 07592 110410, Email: alison.pegg@harrow.gov.uk

Background Papers: Report to Cabinet 21 February 2019 Homes for Harrow: Council House Building Programme

[\(Public Pack\)Agenda Document for Cabinet, 21/02/2019 18:30 \(harrow.gov.uk\)](#)

Call-in waived by the Chair of Overview and Scrutiny Committee

NO