

	Officer Key Decision May 2024
	Report to the Corporate Director of Neighbourhoods and Regeneration
	Lead Cabinet Member for Regeneration, Planning & Growth
Acquisition of Falcon Public House Site, Kilburn Lane, NW10	

Wards Affected:	Queen's Park, Kilburn Park
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Part Exempt – Appendix 1 is exempt as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)"
List of Appendices:	One Appendix 1(exempt) – Value of Acquisition Offer
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Archika Kumar, Head of Estate Regeneration Archika.Kumar@brent.gov.uk

1.0 Executive Summary

- 1.1. This report seeks approval for the Council to acquire the freehold of the Falcon Public House site situated on Kilburn Lane for up to the maximum sum as set out in Appendix 1 from Londonewcastle (QP2) LLP. The objective is to accelerate the comprehensive redevelopment of the Falcon Public House site, contributing to the ongoing regeneration of the South Kilburn Housing estate to deliver much needed affordable housing.
- 1.2. This report seeks approval for what Officers consider is the highest possible figure for the purchase of the Falcon Public House, as determined by the Arbitrator. While the expected cost of the Falcon Public House is significantly less, preparing for the possibility of the Arbitrator valuing the property at its highest potential price is prudent. This approach ensures that Brent will have the necessary funds and approvals ready to pay within days/weeks if required. Therefore, the appropriate governance measures are being put in place to cover all potential scenarios. Further details regarding this maximum value can be found in Appendix 1.

2.0 Recommendation(s)

That the Corporate Director of Neighbourhoods and Regeneration in consultation with the Lead Cabinet Member for Regeneration, Planning & Growth:

- 2.1 Approves the acquisition by the Council of the freehold of the Falcon Public House site situated on Kilburn Lane from Londonewcastle (QP2) LLP for up to the maximum sum detailed in Appendix 1.

3.0 Detail

Contribution to Borough Plan Priorities & Strategic Context

- 3.1 South Kilburn was identified as a priority area for driving economic opportunity and regeneration within Brent – Prosperity and Stability in Brent, Thriving communities (Brent Borough Plan 2023-27). The Regeneration Strategy for Brent 2010-2030 identifies the transformational change of South Kilburn within strategic priority one. The regeneration will also make contributions to the other four priorities of the A Cleaner, Greener Future, Thriving Communities, The Best Start in Life and A Healthier Brent.

Background

- 3.2 At its meeting on 14 October 2019, Cabinet resolved to terminate the South Kilburn Queens Park LLP Project Agreement and Members Agreement (“SKQP Agreement”) by 30 October 2019, if an agreement on outstanding conditions precedent could not be reached between the Council and LN.
- 3.3 Additionally, Cabinet resolved that, contingent upon the termination of the SKQP Agreement, the Council should enter into an option agreement for the acquisition of the Falcon Public House site situated on Kilburn Lane (the “Site”) from Londonewcastle (QP2) LLP (“LN”). The authority to exercise this option and negotiate terms for the acquisition of the Site was delegated to the Strategic Director of Regeneration and Environment (now Corporate Director of Neighbourhoods and Regeneration), in consultation with the Cabinet Member for Regeneration, Property, and Planning (now the Cabinet Member for Regeneration, Planning and Growth).
- 3.4 Despite efforts to resolve matters between the parties, the SKQP Agreement was terminated by the Council. As per the terms of the termination and the Option Agreement dated 27 June 2022, the Council has the right to acquire the Site at the market value as at 17 August 2020.
- 3.5 On 10 November 2022, LN made an offer as set out in Appendix 1 to sell the Site to the Council. LN reiterated this offer on 26 January 2023. Subsequently, on 3 February 2023, the Council, relying on an independent valuation conducted by Gerald Eve in February 2023, presented a counteroffer as set out

in Appendix 1. In response, LN submitted a Calderbank offer (i.e. a without prejudice offer save as to costs) as set out in Appendix 1 on 20 February 2023.

- 3.6 As agreement on the purchase price could not be reached between the parties, the Council notified LN on 27 February 2023, that the matter would be referred to arbitration as stipulated in the Option Agreement. Subsequently, on 4 July 2023, the President of the Royal Institution of Chartered Surveyors appointed an Arbitrator to assess the Market Value of the Site as at 17 August 2020, as outlined in the Option Agreement.
- 3.7 The parties are presently engaged in arbitration and expert reports for planning and valuation were exchanged in January 2024. Planning points of reply ("POR") were exchanged on 4 March 2024 and Valuation POR were exchanged on 18 March 2024. The Arbitrator will subsequently review this evidence and determine the Market Value through an award.
- 3.8 The Council made a Calderbank offer as set out in Appendix 1 on 17 January 2024. LN submitted a Calderbank offer as set out in Appendix 1 on 8 February 2024. LN amended the terms of their Calderbank offer on 4 March 2024 indicating that they are prepared to settle the Arbitration on the basis that the purchase price remains the same but that the Council shall pay LN's reasonable costs and all of the appointed Arbitrator's fees and charges. LN then submitted a further Calderbank offer as set out in Appendix 1 on 4 April 2024. This offer is open for acceptance until it is formally withdrawn.
- 3.9 In the event that the arbitrator's award is at or below the specified offer figure of the Council, the Council may have the opportunity to seek reimbursement for the arbitration costs incurred from 3 weeks after the date of the offer.
- 3.10 If the arbitrator's award equals or exceeds the Calderbank offer of LN, then LN might be eligible to seek reimbursement of their arbitration costs from the Council from 3 weeks after the date of the offer. In the event that the arbitrator awards a figure falling between the two Calderbank offers, it is likely that no costs award will be made, (unless the arbitrator gives credit for a "near miss" ie his award is very close to an offer, but this is at his discretion) and each party will bear their own costs. Nonetheless, the arbitrator will consider the conduct of the parties, and if one is found to be unreasonable, there is a possibility of a costs award against them.
- 3.11 If the Council does not make a Calderbank offer, then there is no opportunity for the Council to have any protection against the costs incurred by the council being payable by LN. A higher offer from the Council enhances the likelihood of acceptance by LN, increasing the probability of the Council being partially reimbursed for its costs while avoiding the obligation to pay LN's or the arbitrator's costs. In essence, making a further Calderbank offer carries no inherent disadvantages and a number of potential advantages.
- 3.12 The Council has appointed a team of experts including design, planning, valuation and cost consultants to determine the value of the Site as at 17 August 2020 and prepare evidence as required by the Order of Directions issued by

the Arbitrator. Upon detailed review, the experts are of the view that the Council's offer made in February 2023 as set out in Appendix 1 remains a suitable offer and strikes a balance between the market value of the Site, as determined by the Council's appointed valuers, and improving the chances of it being accepted by LN and being as close as possible to the award made by the Arbitrator.

- 3.13 Upon the arbitrator making his award, the Council is bound by the award and is legally committed to purchase the Site at the amount of the award within the specified timeframes outlined in the option agreement unless both parties mutually agree a different timetable. Failure to complete the purchase of the Site within the designated timeframes in the option agreement may expose the Council to potential legal action from LN.
- 3.14 It is necessary for the Council to be prepared to acquire the Site at a purchase price falling within the range established by the lowest and highest valuations submitted as evidence to the arbitrator, as set out in Appendix 1. To facilitate this, the Council should allocate funds based on the highest value as set out in Appendix 1, plus LN's potential fees.
- 3.15 LN's fees are estimated and indicated in Appendix 1. These were calculated taking into account the fees incurred by the council and adding 35%. Due to the ongoing arbitration proceedings, the Council has been advised to refrain from requesting a specific fee estimate from LN at this time.

4.0 Alternative Options Considered

- 4.1 Given Cabinet's requirements to terminate the SKQP Agreement and enter into an option agreement for the purchase of the Falcon Public House as set out in paragraphs 3.2 and 3.3, Officers are required to pursue the purchase of the Falcon Public House.
- 4.2 As detailed in paragraph 3.6, Officers have attempted on a number of occasions to agree a purchase price for the Falcon Public House with LN. Only when it was not possible to agree the purchase price, did officers refer the matter to arbitration as stipulated in the Option Agreement.
- 4.3 During the ongoing arbitration, Officers have continued to make attempts to agree a purchase price as detailed in Appendix 1.

5.0 Stakeholder and ward member consultation and engagement

- 5.1 Consultation with the Cabinet member for Finance, Resources and Reform and also Regeneration, Planning & Growth has been carried out in relation to this matter. Ward Members have been engaged in terms of the proposed course of action.

6.0 Financial Considerations

- 6.1 The South Kilburn budget within the capital programme includes the provision for the proposed acquisition of the Site. An acquisition at the offer price as set out in Appendix 1 will be subject to Stamp Duty Land Tax.
- 6.2 There is no disadvantage to the making of a Calderbank offer given the potential opportunity for costs to be claimed from LN through the arbitration process.
- 6.3 South Kilburn is to be net cost zero – so the cost of acquiring the Site has to be factored into the viability – and that this viability will have to include any interest costs borne if borrowing for this acquisition is needed.

7.0 Legal Implications

- 7.1 Only the Corporate Director, Finance and Resources or the Director of Property and Assets may acquire or dispose of an interest in land or buildings.
- 7.2 The restrictions placed upon such acquisitions or disposals are set out in paragraphs 11.2 and 11.3 of the Constitution. The Corporate Director, Finance and Resources or the Director of Property and Assets shall refer all other acquisitions and disposals including matters where the disposal or acquisition value are over and above the restrictions set out in paragraphs 11.2 and 11.3 of the constitution but below the amounts set out in paragraph 13 of the constitution to the cabinet member with delegated authority or to the cabinet.
- 7.3 Cabinet, at its meeting on 14 October 2019, authorised the option to acquire the Site to be exercised and for the terms of such acquisition to be agreed by the Corporate Director of Community and Regeneration in consultation with the Cabinet Member for Regeneration, Planning and Growth. Recommendation 2.1 seeks authority from the relevant Corporate Director and Lead Member who have replaced those detailed in the October 2019 Cabinet decision to agree terms of such acquisition up to a maximum price as set out in Appendix 1. Should the cost of acquisition of the Site be less than the maximum price detailed in Appendix 1, authority for that lesser price will be sought by way of a recordable decision.

8.0 Equity, Diversity & Inclusion (EDI) Considerations

- 8.1 Pursuant to s149 Equality Act 2010 (the “Public Sector Equality Duty”), the Council must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it,
- 8.2 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender

reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 8.3 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
- 8.4 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary.
- 8.5 The proposals in this report have been subject to screening and officers believe that there are no adverse equality implications.
- 8.6 The area was previously a New Deal for Communities area and as such, all interventions are specifically targeted at those people who suffer social economics disadvantage. South Kilburn Trust, through its widening participation, seek to find ways of involving and engaging with all local residents and particularly those who traditionally are 'hard to reach'.
- 8.7 The new homes in South Kilburn are available to all secure tenants currently living in properties due for demolition as part of the South Kilburn regeneration programme within the neighbourhood regardless of their ethnicity, age, gender, marital status/civil partnership, sexual orientation, disability, gender identity or expression or religion or belief. A proportion of new homes are designed to be wheelchair adaptable while the allocations process considers the housing needs of secure tenants in respect of issues that maybe derived from individuals' age, disability, gender reassignment, pregnancy and maternity status, marriage and civil partnership status, race, religion or belief, sex, sexual orientation, ethnicity. Following the upcoming Needs Assessments carried out by the Estate Regeneration Housing Team the equalities actions will be reviewed and analysed at that time.

9.0 Climate Change and Environmental Considerations

- 9.1 The Council declared a climate and ecological emergency in 2019 and set out to do all in its gift to become carbon neutral on a borough-wide basis by 2030. The Council has also embarked on a pioneering 'Green Neighbourhoods' programme as one of the key focal points of its 2022-24 Delivery Plan, of which South Kilburn was selected as a 'development-led' Green Neighbourhood.
- 9.2 There are no identifiable direct climate change or environmental implications with relation to making an offer for the Site recommended in this report. However, should the Council be successful in acquiring the Site, officers should be mindful of the Council's existing climate emergency commitments and any future course of action should seek to be as environmentally sustainable as

possible, and seek to minimise emissions or any detrimental environmental impact. This is especially important given that South Kilburn is a designated green neighbourhood, as mentioned above.

10.0 Human Resources/Property Considerations (if appropriate)

10.1 There are no direct Human Resource implications of this report. The proposals contained within this report will secure the Site for future development as part of the South Kilburn Regeneration Programme.

11.0 Communication Considerations

11.1 South Kilburn Regeneration programme including the development of the physical proposals of the area has been and will continue to be the subject of extensive consultation and engagement with the community in and around South Kilburn estate. The Programme was the subject of a Residents' ballot in 2019.

Related document(s) for reference

Cabinet 14 October 2019 - South Kilburn Queens Park (SKQP) LLP – Termination and the Option to Acquire Falcon Land

Report sign off:

Alice Lester
Corporate Director Neighbourhoods & Regeneration