



Executive
22 April 2013

Report from the Director of Regeneration and Major Projects

Wards Affected:
Kilburn

South Kilburn Regeneration Phase 2

APPENDICES 2, 3, 8, 13 & 18 ARE NOT FOR PUBLICATION

1. SUMMARY

1.1 General

This report summarises the progress made on the regeneration of South Kilburn and sets out the approvals required by the Executive to further progress Phase 2 of the regeneration programme, comprising Site 11b, Phase 2a and Phase 2b.

1.2 Site 11B

This report summarises the procurement process undertaken by the Council to procure a developer partner to redevelop the British Legion and Albert Road Day Care Centre (together defined as '**Site 11b**', shown on Plan A, Appendix 1) and requests delegation to the Director of Regeneration and Major Projects in consultation with the Director of Legal & Procurement to award and enter into a Development Agreement with the preferred developer partner.

Site 11b Approvals

1.2.1 Delegate authority to Director of Regeneration and Major Projects in consultation with the Director of Legal & Procurement to award and enter into a Development Agreement with the preferred developer partner for Site 11b.

1.2.2 Undertake all necessary steps to secure vacant possession of Site 11b and extinguish rights and interests in the land to enable development.

1.3 Phase 2a

This report summarises the procurement process undertaken by the Council to procure a developer partner to redevelop Bronte House and Fielding House (together defined as '**Phase 2a**', shown on Plan B, Appendix 1) and requests delegation to the Director of Regeneration and Major Projects in consultation with the Director of Legal & Procurement to award and enter into a Development Agreement with the preferred developer partner. This report also summarises the progress made on the Phase 2a CPO and requests the Council exercises its power to confirm the CPO.

Phase 2a Approvals

- 1.3.1 Delegate authority to Director of Regeneration and Major Projects in consultation with the Director of Legal & Procurement to award and enter into a Development Agreement with the preferred developer partner for Phase 2a.
 - 1.3.2 Undertake all necessary steps to secure vacant possession of Phase 2a and extinguish rights and interests in the land to enable development.
 - 1.3.3 Exercise the power, granted by the Secretary of State for Communities and Local Government under section 14A of the Acquisition of Land Act 1981 ("**the 1981 Act**"), to confirm The London Borough of Brent (South Kilburn Regeneration Phase 2a - Bronte House and Fielding House) Compulsory Purchase Order 2013 (referred to hereinafter as "**the Bronte & Fielding CPO**"), subject to the restrictions and requirements of section 14A of the 1981 Act; and
 - 1.3.4 To delegate authority to the Director of Regeneration and Major Projects to carry out all statutory requirements associated with the exercise by the Council of the power granted under section 14A of the 1981 Act in connection with the Bronte & Fielding CPO and, if such power is exercised by the Council, thereafter to take all necessary steps to implement the Bronte & Fielding CPO in furtherance of the delivery by the Council of the South Kilburn Regeneration Programme, including (but not limited to) the general vesting declaration process pursuant to the Compulsory Purchase (Vesting Declarations) Act 1981 and/or the Notice to Treat and Notice of Entry procedure pursuant to the Compulsory Purchase Act 1965.
- 1.4 This report summarises the progress made on Phase 2b of the regeneration of South Kilburn. and seeks approval to:

Phase 2b Approvals

- 1.4.1 To note officers' intentions to procure a full architectural design team to develop detailed design and specification to RIBA Stage D+ for Gloucester House and Durham Court (being part of '**Phase 2b**') by calling off the Homes and Communities Agency's Multidisciplinary Panel and report back to the Executive following award of contract.
 - 1.4.2 To note officers are undertaking statutory consultation with secure tenants occupying properties in Phase 2b regarding (i) the Council's proposal to apply to the Secretary of State for use of Ground 10A of the Housing Act 1985; (ii) the Council's proposal to make a CPO on properties in Phase 2b that are currently occupied by secure tenants; and (iii) consultation in connection with a draft Allocation Policy for Phase 2b. Officers will report back to the Executive detailing the outcome of this statutory consultation; and may, depending on the outcome of the consultation and members views on that, seek Executive approval to a) authorise the Director of Regeneration and Major Projects to seek the Secretary of State's consent to the disposal and development of Phase 2b for the purpose of Ground 10A of Schedule 2 to the Housing Act 1985; and b) authorise the final Phase 2b Allocation Policy.
 - 1.4.3 To re-affirm in relation to Durham Court, Gloucester House, Masfield House and Wordsworth House (together defined as '**Phase 2b**') the compulsory purchase authorisation for the acquisition of third party interests (including secure tenancies) and rights and related authorisations as set out in this report.
- 1.5 In relation to all future phases of the regeneration of South Kilburn this report seeks approval to:

Phase 3 and 4 Approvals

- 1.5.1 To delegate authority to the Assistant Director of Property and Asset Management in conjunction with the Director of Finance to authorise the acquisition of third party interests and rights in South Kilburn as necessary to progress the regeneration programme.

2. RECOMMENDATIONS

2.1 General Recommendations

That the Executive notes the progress made on the South Kilburn Regeneration Project as set out in this report.

2.2 Site 11b Recommendations

2.2.1 That the Executive delegates authority to the Director of Regeneration & Major Projects in consultation with Director of Legal and Procurement to award and enter into a Development Agreement with the preferred developer partner in respect of Site 11b.

2.2.2 That the Executive agrees that the sum set out in Appendix 2 (restricted) from the proceeds of the sale of Site 11b be re-invested into the regeneration of South Kilburn, including for the purpose of bringing forward further development sites within the regeneration area.

2.2.3 That the Executive authorise the Director of Regeneration & Major Projects (where the Director of Regeneration & Major Projects in conjunction with the Director of Legal and Procurement consider applicable) to take the necessary steps to override or where requisite extinguish rights and interests in Site 11b which might otherwise act to constrain the development by:

(a) Appropriating the land Site 11b or any part or parts thereof for planning purposes under Section 122 of the Local Government Act 1972 when no longer required for the purpose for which it is currently held

(b) Taking any other legal steps as may be necessary to achieve this objective.

2.3 Phase 2a Recommendations

2.3.1 That the Executive delegates authority to the Director of Regeneration & Major Projects in consultation with Director of Legal & Procurement to award and enter into a Development Agreement with the preferred developer partner in respect of Phase 2a subject to the Council obtaining vacant possession of the site and the Secretary of State's consent to the disposal under Section 32 of the Housing Act 1985.

2.3.2 That the Executive agrees that the sum set out in Appendix 3 (restricted) from the proceeds of the sale of Phase 2a be re-invested into the regeneration of South Kilburn, including for the purpose of bringing forward further development sites within the regeneration area.

2.3.3 That the Executive authorises the Director of Regeneration & Major Projects (where the Director of Regeneration & Major Projects in conjunction with the Director of Legal and Procurement consider applicable) to take the necessary steps to override or where requisite extinguish rights and interests in Phase 2a or any part or parts thereof which might otherwise act to constrain the development by:

(a) Appropriating the land Phase 2a or any part or parts thereof for planning purposes under Section 122 of the Local Government Act 1972 when no longer required for the purpose for which it is currently held

(b) Seeking the Secretary of State's consent under section 19 Housing Act 1985 in order to appropriate any part of the land consisting of a house or part of a house for planning purposes where applicable.

(c) Taking any other legal steps as may be necessary to achieve this objective.

- 2.3.4 That the Executive, in exercise of the power granted by the Secretary of State for Communities and Local Government under section 14A of the Acquisition of Land Act 1981, confirms the Bronte & Fielding CPO.
- 2.3.5 That the Executive delegates authority to the Director of Regeneration and Major Projects to carry out all statutory requirements associated with the exercise by the Council of the power granted under section 14A of the Acquisition of Land Act 1981 in connection with the Bronte & Fielding CPO and, thereafter to take all necessary steps to implement the Bronte & Fielding CPO in furtherance of the delivery by the Council of the South Kilburn Regeneration Programme, by acquiring all non-Council-owned interests in the area shown edged red (**'the Bronte & Fielding CPO Land'**) on Plan C attached at Appendix 1 being at and adjacent to Bronte House and Fielding House for the development of the Bronte & Fielding CPO Land, and the compulsory acquisition of such interests shall be effected through the use by the Council of the general vesting declaration ("**GVD**") process pursuant to the Compulsory Purchase (Vesting Declarations) Act 1981 and/or through the use of the Notice to Treat and Notice of Entry procedure pursuant to the Compulsory Purchase Act 1965, as appropriate and securing possession of secure tenancies by possession proceedings pursuant to Ground 10A of Schedule 2 to the Housing Act 1985.

2.4 Phase 2b Recommendations

- 2.4.1 That the Executive notes officers' intentions, (subject to Director of Legal & Procurement Confirmation that participation in the HCA framework is legally permissible), to progress procurement of a full architectural design team to develop detailed design and specification to RIBA Stage D+ for Gloucester House and Durham Court as shown edged red on Plan D at Appendix 1, by calling off the Homes and Communities Agency's Multidisciplinary Panel and report back to the Executive following award of contract.
- 2.4.2 That the Executive notes statutory consultation is currently being undertaken with secure tenants occupying properties in Phase 2b on three proposals; (i) statutory consultation in connection with seeking approval of the Secretary of State for use of Ground 10A of the Housing Act 1985; (ii) consultation on the Council's proposal to make a CPO on properties in Phase 2b that are currently occupied by secure tenants; and (iii) consultation in connection with a draft Allocation Policy for Phase 2b. Officers will report back to the Executive detailing the outcome of this statutory consultation; and may, depending on the outcome of the consultation and members views on that, seek Executive approval to a) authorise the Director of Regeneration and Major Projects to seek the Secretary of State's consent to the disposal and development of Phase 2b for the purpose of Ground 10A of Schedule 2 to the Housing Act 1985; and b) authorise the final Phase 2b Allocation Policy.
- 2.4.3 That the Executive authorises the acquisition by agreement pursuant to section 227 of the Town and Country Planning Act 1990 and the making of a compulsory purchase order (CPO) pursuant to section 226 Town and Country Planning Act 1990 to acquire all non-Council interests in the area as shown edged red ('the Gloucester and Durham CPO Land') on Plan D and E attached at Appendix 1 being at and adjacent to Gloucester House, Durham Court, Masfield House and Wordsworth House together with any new rights which may be required for the development of the Gloucester and Durham CPO Land under section 13 Local Government (Miscellaneous) Provisions Act 1976.
- 2.4.4 That the Executive authorises the:
- (a) Making, publication and submission by the Council to the Secretary of State of the CPO, in respect of the Gloucester and Durham CPO Land for confirmation, whilst at the same time seeking to acquire the CPO Land by private negotiated treaty on such terms as may be agreed by the Director of Regeneration and Major Projects;
 - (b) Director Regeneration and Major Projects to enter into agreements and give undertakings on behalf of the Council with the holders of interests in the Gloucester and Durham CPO

Land or parties otherwise affected by the scheme setting out the terms for the withdrawal of their objections to the confirmation of the CPO and including the offering back of any part of the Gloucester and Durham CPO Land not required by the Council after the completion of the development or the acquisition of rights over the Gloucester and Durham CPO Land in place of freehold acquisition, where such agreements are appropriate;

- (c) Making of one or more one or more general vesting declarations or service of Notices to Treat and Notices of Entry (as appropriate) pursuant to the Compulsory Purchase (Vesting Declarations) Act 1981 and the Compulsory Purchase Act 1965 respectively should the CPO be confirmed by the Secretary of State or (if the CPO is unopposed) should the CPO be confirmed by the Council in the event that the Council is authorised by the Secretary of State to exercise the power conferred by section 14A of the Acquisition of Land 1981;
 - (d) Serving on those who have or are reputed to have an interest in, and/or are in occupation of, the Gloucester and Durham CPO Land, all requisite notices relating to the making and confirmation of the CPO and any proceedings relating to the same;
 - (e) Director of Regeneration and Major Projects to remove, while the CPO is in draft form, and prior to its being made, from the CPO any plot (or interest therein) no longer required to be acquired compulsorily for the scheme to proceed and to amend the interests scheduled in the CPO (if so advised) and to alter the nature of the proposed acquisition from an acquisition of existing property interests to an acquisition of new rights (if so advised) or after the CPO has been made to submit modifications to the Secretary of State;
 - (f) Director of Regeneration and Major Projects within the defined boundary of the Gloucester and Durham CPO Land, to acquire land and/or new rights by agreement either in advance of the confirmation of compulsory purchase powers, if so advised, or following the confirmation of the CPO;
 - (g) Director of Regeneration and Major Projects, if so advised, to seek to acquire for the Council any interest in land wholly or partly within the limits of the Gloucester and Durham CPO Land for which a blight notice has been validly served.
- 2.4.5 That the Executive authorises the Assistant Director of Property and Asset Management (where the Assistant Director of Property and Asset Management in conjunction with the Director of Finance consider applicable) to acquire third party interests and rights within Phase 2b as necessary to progress the regeneration programme.
- 2.4.6 That the Executive authorise the Director of Regeneration & Major Projects (where the Director of Regeneration & Major Projects in conjunction with the Director of Legal and Procurement consider applicable) to take the necessary steps to override or where requisite extinguish rights and interests in Phase 2b or any part or parts thereof which might otherwise act to constrain the development by:
- (a) Appropriating Phase 2b or any part or parts thereof for planning purposes under Section 122 of the Local Government Act 1972 when no longer required for the purpose for which it is currently held
 - (b) Seeking the Secretary of State's consent under section 19 Housing Act 1985 in order to appropriate any part of the land consisting of a house or part of a house for planning purposes where applicable.
 - (c) Taking any other legal steps as may be necessary to achieve this objective.

2.5 Phase 3 and Phase 4 Approvals

- 2.5.1 That the Executive authorises the Assistant Director of Property and Asset Management (where the Assistant Director of Property and Asset Management in conjunction with the Director of Finance consider applicable) to acquire third party interests and rights within Phase 3 and Phase 4 of the South Kilburn Masterplan Area as necessary to progress the regeneration programme by way of negotiation.

3. PHASE 1 PROGRESS UPDATE

- 3.1 'Phase 1a' (being the Texaco Garage Site, Macdonald House, Marshall House, Albert Road, Zone 11a, and the Carlton Vale Roundabout Site Zone 3C) of the South Kilburn Regeneration Programme is now complete. 360 high quality new homes have been built, of which 256 are affordable and have been occupied by South Kilburn households.
- 3.2 Catalyst Housing Ltd (formally Catalyst Housing Group) took possession of Cambridge Court, Wells Court, Ely Court and Bond, Hicks Bolton and Wood House together 'Phase 1b' on 13th July 2012 to deliver 208 new homes by summer 2014. With demolition works complete, construction work is now underway across all three sites. 107 of these new homes developed will be affordable and made available to facilitate the remaining Phase 2 decant programme.

4. SITE 11B PROGRESS UPDATE

Site 11b Disposal

- 4.1 On 18th July 2011 the Executive noted the Director of Regeneration and Major Projects intention to secure Site 11b for disposal on the open market. On 22nd August outline planning permission was granted for a mixed used development comprising 144 new homes (28 of which are affordable) and 480m² of commercial floor space on the site. On 20th November 2012 the Council secured vacant possession of the entire site after agreeing terms with the Royal British Legion to surrender their lease and the relocation of the Albert Road Day Care Centre to the new John Billiam Centre in Kenton. On 15th October 2012 the Executive authorised officers to commence an Official Journal of the European Union (OJEU) procurement process to procure a developer partner to acquire and redevelop Site 11b in accordance with the outline planning permission.
- 4.2 The South Kilburn Masterplan provides for Site 11b to comprise predominately private residential development. The primary objective from the disposal of Site 11b, as set out in the South Kilburn Regeneration Programme, is to achieve a land receipt providing a cash injection to enable Phase 2b and Phase 3 of the programme to commence.
- 4.3 The Council are looking to select a development partner to deliver the residential-led, mixed used redevelopment of Site 11b. The selected development partner will be responsible for the demolition of existing structures on site and erection of a new mixed use development comprising of 144 residential units, 28 of which are affordable units, and 480m² of commercial floor space. An OJEU compliant procurement process was undertaken to procure a development partner through the restricted procedure. The development partner will be required to ensure the delivery of 28 affordable homes at Brent Council's Target Rents (as approved by the Executive on 15th October 2012), on the basis of South Kilburn Tenancies, and affording the Council 15 years' nomination rights.

Site 11b: Principle Offer

- 4.4 The principle structure of the standard offer set out in the procurement documents, in accordance with the Development Agreement is summarised at Appendix 4. No variant bids were invited.

Site 11b: OJEU Procurement Process

- 4.5 On 24th October 2012 the Council commenced the two stage process involved in procuring a development partner through the restricted procedure. A publication of Supplement to the OJEU

contract notice was made on 24th October 2012. An advert was also placed in the Estates Gazette. Potential development partners were invited to express an interest in the project. The Council received 91 expressions of interests. All 91 interested parties were sent a Memorandum of Information (MOI).

- 4.6 The MOI set out information about the site, additional details of the development opportunity and outlined the key principles of the project as set out above in Appendix 5. Bidders were asked to confirm their interest in the project by submitting a Pre-Qualification Questionnaire (PQQ) which incorporated four site specific questions designed to test the development partner's capabilities and experience in delivering similar mixed used developments.
- 4.7 A total of 13 developers responded to the MOI and submitted a PQQ in accordance with the deadline on 10th December 2012. The four site specific questions used to shortlist the developers are set out at Appendix 6.
- 4.8 The five developers who scored highest were Invited To Tender (ITT) in a competition to deliver the Site 11b project.
- 4.9 On 20th December 2012 a project specific ITT was issued to the five short listed developers in what was the final stage of the procurement process. The ITT incorporated an array of project specific information, including but not limited to the following; technical material in relation to the developments and associated outline planning permissions, a draft Development Agreement, title deeds, site investigation reports and a draft South Kilburn Tenancy Agreement.
- 4.10 On Friday 18th January 2013, four short listed developers, one having withdrawn from the competition of their own volition, were invited to attend a mid tender review meeting where they were provided with an opportunity to seek clarifications on the ITT. Two short listed developers then withdrew from the competition of their own volition. The remaining two shortlisted bidders were also invited to attend a pre-reserved matters application meeting on 4th February 2013 with representatives from Brent Council's Planning Department to seek clarifications on their proposed design intent.
- 4.11 The ITT stated that the evaluation will be determined and the contract award on the basis of the most economically advantageous tender (hereafter referred to as "MEAT") to the Council and in evaluation of the tenders, the Council would use the evaluation criteria set out in the Evaluation Matrix at Appendix 7 of this report. Overall 55% of the marks were awarded for price and 45% for quality.
- 4.12 Of the 55% of the marks awarded for price, the highest bid automatically received 100% of the marks for the financial element. Other submissions receive a percentage score based on how much lower their bid is in percentage terms than the highest.
- 4.13 Tenders from two organisations (Appendix 8) (restricted) were submitted on time and these were opened and logged in accordance with the Council's Contract Standing Orders 100.

Site 11b: Tender Evaluation Process

- 4.14 Both submissions received were of extremely high quality and both submissions clearly and confidently demonstrated that they could deliver the redevelopment of Site 11b in accordance with the terms and conditions set out in the ITT and Development Agreement.
- 4.15 Evaluation of all parts of the tender submission was carried out by a panel of officers, with the assistance of consultants, facilitated by an Officer from the Procurement Section. Technical advice was provided by the Council's Planning Department in respect of design. Deloitte Real Estate provided commercial and financial advice. Panel members met on Monday 25th February 2013 to score the quality section of the evaluation.
- 4.16 The financial evaluation (which carries a maximum percentage of 55 of the total available score) was carried out by the Council's cost consultant and agent Deloitte Real Estate in conjunction with officers from Finance and Corporate Services.
- 4.17 Both bidders attended a clarification meeting with the tender evaluation panel and technical advisors on Friday 8th March 2013. The clarifications provided by the bidders at the meeting informed the tender

evaluation panel when they met to confirm their scores on Friday 8th March 2013 and Friday 22nd March 2013.

4.18 Details of the price and quality evaluation results are set out in Appendix 9.

4.19 Following the evaluation of the tender submissions, the bid from bidder 2 has been identified as the top scoring tender bid and therefore is considered the most economically advantageous tender. As the development agreement is being prepared for signature officers recommend that the Executive delegate authority to the Director of Regeneration & Major Projects in consultation with Director of Legal & Procurement to award and enter into the Development Agreement with the preferred bidder to redevelop Site 11b.

4.20 The restricted procedure undertaken to procure a developer partner for Site 11b means no material changes can be made to either the structure of the offer as set out in the ITT or the Preferred Bidder's submission. If for any reason the Council is unable to enter into the development agreement with the preferred bidder, officers recommend that the Executive delegates authority to the Director of Regeneration & Major Projects in consultation with Director of Legal & Procurement to award and enter into the Development Agreement with the reserve bidder, (bidder 1) to redevelop Site 11b.

4.21 Instead of hoarding Site 11b prior to disposal, the Council in partnership with South Kilburn Neighbourhood Trust has delivered 'The Albert', a meanwhile use project. The site security budget funded the project which has delivered an exiting programme of events, activities and performances around the theme of health and well being. The project has been well received. The Council intend to use a small proportion of the non-refundable Site 11b commitment fee to continue the project until the site is handed over to the preferred bidder for development. The Council will endeavour to work with the preferred bidder to keep the project running as long as possible prior to demolition works commencing on site.

5. PHASE 2A PROGRESS UPDATE

5.1 On 20th June 2012 a planning application for Phase 2A ("Bronte House and Fielding House") was approved. On 15th October 2012 the Executive authorised the Director of Regeneration and Major Projects to undertake a mini-competition under the South Kilburn Developer Framework to redevelop Bronte House and Fielding House in accordance with the planning permission granted.

Bronte House and Fielding House Disposal

5.2 The Council are looking to select a development partner from the South Kilburn Developer Framework to deliver Phase 2a, the comprehensive redevelopment of Bronte House and Fielding House to deliver 229 new homes. The selected development partner will be responsible for and bear all costs associated with demolishing existing buildings on site, carrying out preparation and any enabling works required and subsequently build out and develop the scheme in accordance with the Stage D Design and Specification to the highest architectural quality and workmanship. 103 of the 229 new homes provided must be affordable. The development partner will be required to ensure the delivery of 103 affordable homes at Brent Council's Target Rents (as approved by the Executive on 15th October 2012), on the basis of South Kilburn Tenancies, and affording the Council 15 years' nomination rights.

The Bronte House and Fielding House Disposal: Principle Offer

5.3 The principle structure of the standard offer set out in the procurement documents, in accordance with the Development Agreement, is summarised at Appendix 10.

Bronte House and Fielding House Disposal: Variant Bids Options

5.4 To achieve the Council's objectives of; removing the existing structures from site by spring 2014 and developing an improved offer for existing leaseholders, the South Kilburn Developer Framework were also required to submit 3 variant bids options in response to this mini tender. Details of the 3 variant bid options, as set out in the procurement documents, in accordance with the Development Agreement are summarised at Appendix 11. The preferred bidder was chosen on the basis of their principle offer; the variant bid options did not form part of the evaluation. Instead, the options will be incorporated into the

Development Agreement as contractual options, which the Council may exercise in accordance with the terms contained therein.

Bronte House and Fielding House Disposal: Mini Tender

- 5.5 On 12th December 2012 a project specific Bronte House and Fielding House Mini Tender was issued to all 6 Members of the South Kilburn Developer Framework. The Mini Tender incorporated an array of project specific information, including but not limited to the following; technical material in relation to the developments and associated planning permissions, a draft Development Agreement, rent table and a South Kilburn Tenancy Agreement. The following six members were invited to bid in a mini competition for the Bronte House and Fielding House redevelopment project;
- Network Housing Group of Olympic Office Centre, 8 Fulton Road, Wembley, Middlesex, HA9 0NU;
 - London and Quadrant of Osborn House, Osborne Road, London, SE3 9DR;
 - Mulalley One Housing Group of Teresa Gavin House, Woodford Avenue, Woodford Green, Essex, IG8 8FA;
 - Catalyst Housing Group of Ealing Gateway, 26 – 30 Uxbridge Road, London W5 2AU;
 - Ardmore First Base Partnership, Byrne House, Jeffreys Road, Brimsdown, Enfield, Middlesex, EN3 7UB; and
 - Genesis Housing Group of Capital House, 25 Chapel Street, London, NW1 5DT
- 5.6 All six members of the South Kilburn Developer Framework were invited to attend a mid tender review meeting on Monday 14th January 2013. Three bidders attended the mid tender review meeting, three having withdrawn from the competition of their own volition. The mid tender review meeting provided bidders with an opportunity to seek clarifications on the Mini Tender.
- 5.7 The Mini Tender stated that the evaluation will be determined and the contract award on the basis of the MEAT to the Council and in evaluation of the tenders, the Council would use the evaluation criteria set out in the Evaluation Matrix at Appendix 12 of this report. Overall 40% of the marks were awarded for price and 60% for quality.
- 5.8 Of the 40% of the marks awarded for price, the highest bid automatically receive 100% of the marks for the financial element. Other submissions received a percentage score based on how much lower their bid is in percentage terms than the highest.
- 5.9 Of the 60% of the marks awarded to quality, the marks were aggregated across 8 categories encompassing:
- Vision for South Kilburn
 - Design quality
 - Delivery of housing development
 - Housing management
 - Public realm and neighbourhood management
 - Resident liaison

- 5.10 Tenders from three organisations (Appendix 13 Restricted) were submitted on time and these were opened and logged in accordance with the Council's Contract Standing Orders 100. All three submissions incorporated three variant bid options in accordance with the three variant bid options set out at Appendix 11.

Bronte House and Fielding House Disposal: Mini Tender Evaluation Process

- 5.11 All submissions received were of extremely high quality and all submissions clearly and confidently demonstrated that they could deliver the redevelopment of Bronte House and Fielding House in accordance with the terms and conditions set out in the Mini Tender and Development Agreement.
- 5.12 Evaluation of all parts of the tender submission was carried out by a panel of officers, with the assistance of consultants, facilitated by an Officer from the Procurement Section. Sherlock Consultancy provided commercial advice in addition, Sweett Ltd provided financial advice. Panel members met on Tuesday 12th March 2013 to score the quality section of the evaluation.
- 5.13 The financial evaluation (which carries a maximum percentage of 40 of the total available score) was carried out by the Council's cost consultant Sweett Ltd in conjunction with officers from Finance and Corporate Services.
- 5.14 All three bidders attended a clarification meeting with the tender evaluation panel and technical advisors on Wednesday 20th March 2013. The clarifications provided by the bidders at the clarification meeting informed the tender evaluation panel when they met to confirm their scores on Wednesday 20th March 2013.
- 5.15 At the clarification meeting bidder 1 confirmed their bid incorporated a material change to the Stage D Design and Specification thus their bid was deemed non compliant. Bidder 2 and Bidder 3 were then asked to resubmit their bids based on an alternative overage structure, which the Council considered offered a greater return than the structure set out in the draft Development Agreement. Therefore, on 3rd April 2013 the Council re-opened the Bronte House and Fielding House Mini Competition for a 24 hour period and invited the two remaining bidders to resubmit revised financial bids based on a revised overage clause.
- 5.16 On 4th April 2013 revised financial submissions were received from bidder 2 and bidder 3. The revised financial submissions were evaluated by the Council's cost consultant Sweett Ltd in conjunction with officers from Finance and Corporate Services. The revised financial evaluation informed the tender evaluation panel when they met to confirm their scores on Wednesday 10th April 2013. Details of the price and quality evaluation results are set out in Appendix 14.
- 5.17 Following the evaluation of the tender submissions, the Principle bid from bidder 3 has been identified as the top scoring tender bid and therefore is considered the most economically advantageous tender. As the Development Agreement is being prepared for signature officers recommend that the Executive delegate authority to the Director of Regeneration & Major Projects in consultation with Director of Legal & Procurement to award and enter into the Development Agreement with the preferred bidder to redevelop Bronte House and Fielding House.
- 5.18 The Council may request the preferred bidder commence the Early Works package in accordance with the Early Works Variant Bid Option 1 (Appendix 11). The Council may also request the preferred bidder to provide 5 two-bedroom shared equity units in accordance with Shared Equity Variant Bid Option 2 (Appendix 11).

Bronte House and Fielding House: Compulsory Purchase Order (CPO) ("The Bronte & Fielding CPO")

- 5.19 The completion of Carlton Vale Roundabout Site Zone 3C will enable vacant possession of Bronte House and Fielding House to be achieved as the remaining secure council tenants (resident in Bronte House and Fielding House) have moved into new properties at Zone 3C.
- 5.20 There are however a number of other interests, most notably 7 leasehold interests and a T Mobile (UK) Ltd and Hutchinson 3G UK Limited telecommunication mast, which need to be acquired to enable the

entirety of the Bronte & Fielding CPO Land to be assembled into the Council's ownership. The Council needs to have acquired or have the ability to acquire all third party interests in the whole of the site to enable the Council to satisfy the site assembly condition under the terms and conditions set out in the Development Agreement, secure the capital land receipt and allow demolition works to proceed. In order to enable the Council to satisfy the site assembly condition the Council has made The London Borough of Brent (South Kilburn Regeneration Phase 2a – Bronte House and Fielding House) Compulsory Purchase Order 2013 ("**the Bronte & Fielding CPO**").

- 5.21 The Council has already acquired 9 leasehold interests via private treaty negotiations. The Council is continuing negotiations with the owners of the remaining 7 leasehold interests to acquire their interests by agreement; however, there a number of high risk cases where the Council considers it may be unable to reach agreement. The compulsory acquisition of these leasehold interests may therefore be unavoidable in order to secure site assembly within the requisite timescale.
- 5.22 T-Mobile (UK) Ltd and Hutchinson 3G UK Limited telecommunication mast is currently located on the roof of Fielding House. The Council has served a break notice in respect of the lease to T-Mobile and Hutchison 3G. The notice terminates the lease on 2 October 2013, being the first day "after the fifth anniversary of the Term Commencement Date" (which was 1 October 2008), in accordance with the lease but the lease will be subject to statutory telecoms protection. The Council is currently in negotiations with T Mobile (UK) Ltd and Hutchinson 3G UK Limited to secure the removal and relocation of the telecommunication mast and all associated equipment from site at the earliest opportunity. If an agreement cannot be reached for the early relocation of the mast the Council will look to secure the removal of the mast from site around October 2013 at the latest, either through a court order or the implementation of its powers of compulsory purchase pursuant to the Bronte & Fielding CPO if earlier.
- 5.23 On 15 January 2013 the Council made the London Borough of Brent (South Kilburn Regeneration Phase 2a – Bronte House and Fielding House) Compulsory Purchase Order 2013 ("**the Bronte & Fielding CPO**"). The Bronte & Fielding CPO was made under section 226(1)(a) of the Town and Country Planning Act 1990 pursuant to a resolution of the Council's Executive Committee made on 15th October 2012. The Council subsequently published notice of the making of the Bronte & Fielding CPO and submitted the Bronte & Fielding CPO to the Secretary of State for Communities and Local Government ("**the Secretary of State**") for confirmation.
- 5.24 The Bronte & Fielding CPO was made to ensure that the Council has the power to acquire all third party interests in the whole of the Bronte & Fielding site, compulsorily if necessary, to enable the South Kilburn Regeneration project to proceed. The purpose of the Bronte & Fielding CPO is to facilitate the carrying out of development to include the demolition of Bronte House and Fielding House and the comprehensive residential-led redevelopment of the Bronte & Fielding CPO Land, to deliver 229 new residential units, comprising dwellings to be sold on the open market and 'affordable' dwellings, comprising a range of 1 to 4 bedroom flats and 4 bedroom duplex family units, together with new public realm and improved pedestrian routes through the Bronte & Fielding CPO Land, as well as car parking spaces and new landscaped private and shared gardens ("**together, the Bronte & Fielding Scheme**"). On 20 November 2012 detailed planning permission was granted for the Bronte & Fielding Scheme (planning permission reference 12/0454).
- 5.25 The Council's reason for seeking to acquire the Bronte & Fielding CPO Land pursuant to the Bronte & Fielding CPO is to support and facilitate the delivery of the Bronte & Fielding Scheme.
- 5.26 The Bronte & Fielding CPO, which currently remains unconfirmed, has been returned for confirmation to the Council by the Secretary of State. On 7 March 2013, the Secretary of State served notice on the Council, granting the Council the power (under section 14A of the Acquisition of Land Act 1981, as amended by the Planning and Compulsory Purchase Act 2004 ("**the 1981 Act**") to confirm the Bronte & Fielding CPO, subject to the restrictions and requirements of section 14A of the 1981 Act.
- 5.27 The power in section 14A of the 1981 Act is granted on the basis that all the requirements of sections 11 and 12 of the 1981 Act in relation to the service of notices associated with the Bronte & Fielding CPO have been met; that the Bronte & Fielding CPO is unopposed (no objections to the Bronte & Fielding CPO having been received by the Secretary of State); and that it is capable of confirmation without modification and as a single order (i.e. without any changes and not in stages).

- 5.28 The requirements of section 14A of the 1981 Act as to the service of notices have been met: notice of the making of the Bronte & Fielding CPO was served on all those entitled by statute to receive such notice; no objections to the Bronte & Fielding CPO were received by the Secretary of State and so the Bronte & Fielding CPO is unopposed; and it is capable of confirmation without modification and as a single order.
- 5.29 The Executive Committee now needs to decide whether or not the Council should exercise the statutory power conferred on it by the Secretary of State to confirm the Bronte & Fielding CPO. The decision must be made within the timescale set by the Secretary of State, which requires that if the Bronte & Fielding CPO is to be confirmed, this must be done, and all associated matters (such as the publication of notice of confirmation of the Bronte & Fielding CPO) must be dealt with, and the Secretary of State must be notified that this is the case, within 6 weeks of its having issued the Section 14A notice (i.e. by 18 April 2013). If this timescale is not observed, the Secretary of State may revoke the Council's power to confirm the Bronte & Fielding CPO. Accordingly, the decision (as to whether or not to confirm the Bronte & Fielding CPO) needs to be made in the meeting of the Executive Committee on 22nd April 2013.
- 5.30 In making its decision, the Executive Committee is required to consider all the background information set out in this Report and to have regard to the government guidance set out in ODPM Circular 06/04 – Compulsory Purchase and the Crichel Down Rules ("**the Circular**") which advises, in paragraph 22, that before making a compulsory purchase order, the acquiring authority (i.e. the Council) should be satisfied, as far as is possible, that the proposed scheme to which the compulsory purchase order relates, would be unlikely to be blocked by any impediments to its implementation. In this regard, consideration should be given to any likely financial, physical or legal impediments, including the need for planning permission or other consents. Planning permission for the Bronte & Fielding Scheme has been granted (see paragraph 5.1 above). The financial mechanism for funding the delivery of the Bronte & Fielding Scheme is explained in paragraph 11 below.
- 5.31 If the Bronte & Fielding CPO is confirmed by the Council pursuant to a decision by the Executive Committee to exercise the power made available to the Council by the Secretary of State under section 14A of the 1981 Act, this will enable work to go ahead in relation to the on-going phased delivery of the South Kilburn Regeneration Programme (in this case, part of Phase 2a).
- 5.32 If on the other hand the Bronte & Fielding CPO is not confirmed, or is not confirmed within the timescale set by the Secretary of State (as explained above in paragraph 5.28) such that the power of confirmation granted by the Secretary of State lapses, then the work which the Council (and its consultant team) has carried out to date, in furtherance of the Bronte & Fielding CPO, would be abortive; the implementation of Phase 2a of the South Kilburn Regeneration Programme would be severely jeopardised, if not rendered impossible. The benefits which could be realised under the confirmed Bronte & Fielding CPO could potentially be lost. Such benefits include the power to acquire the outstanding interests in land (as detailed in paragraphs 5.20 and 5.21 above), which is required in order to enable the Bronte & Fielding Scheme to proceed, as well as to enable the delivery of the social, environmental and economic benefits associated with the South Kilburn Regeneration Programme as a whole.
- 5.33 In making the decision to confirm the Bronte & Fielding CPO, the Executive Committee must be satisfied that there is a compelling case in the public interest for confirmation of the Bronte & Fielding CPO and its subsequent implementation, by way of the compulsory acquisition of certain parcels of land (as indicated in paragraphs 5.20 and 5.21 above). Where the Council's powers of compulsory acquisition are exercised, there must be a balance between the aims of the Council as the acquiring authority, and the concerns of those persons whose land, or interest in land, is to be acquired.
- 5.34 If the Bronte & Fielding CPO is confirmed, pursuant to a decision of the Executive Committee, notice of its confirmation must be published and the Secretary of State notified of this. The date on which notice of the confirmation of the Bronte & Fielding CPO is first published will trigger the start of:
- (a) a six-week period during which the decision to confirm the Bronte & Fielding CPO will be open to potential legal challenge in the High Court (under section 23 of the Acquisition of Land Act 1981); and

- (b) the three-year period during which the Bronte & Fielding CPO will be valid, operative and capable of implementation by the Council.

5.35 Confirmation of the Bronte & Fielding CPO by the Council (pursuant to a decision of the Executive) will not give rise to any legal obligation on the Council to implement the Bronte & Fielding CPO by carrying out any compulsory acquisitions. The implementation of the Bronte & Fielding CPO, through the compulsory acquisition of the interests in land which remain to be acquired, must be carried out within the three-year validity period (detailed in paragraph 5.16.2 above), either through the Notice to Treat and Notice of Entry procedure pursuant to the Compulsory Purchase Act 1965 or by the general vesting declaration ("GVD") process pursuant to the Compulsory Purchase (Vesting Declarations) Act 1981.

6. PHASE 2B PROGRESS UPDATE

Gloucester House and Durham Court Progress Update

- 6.1 The tender processes undertaken to date have justified the approach of continuing to make significant investment in the South Kilburn Regeneration Programme. By effectively de-risking development sites e.g. from a planning and site assemble risks, they have become a far more attractive proposition to the market place and this has been reflected in the good land values to date.
- 6.2 On 15th October 2012 the Executive authorised the procurement of a design team to design a residential housing scheme for Gloucester House and Durham Court which will be submitted as a full planning application (RIBA Stage C or D). A pipeline of 'planning approved' development sites will significantly assist the delivery of the South Kilburn Regeneration Programme as well as fulfilling the regeneration's decant requirements.
- 6.3 Subject to advice being obtained from the Director of Legal & Procurement in accordance with Contract Standing Order 86(d)(ii) officers intend to procure a full architectural design team to develop detailed design and specification to RIBA Stage D+ for Gloucester House and Durham Court through calling off the Homes and Community Agency's Multidisciplinary Framework and report back to the Executive following award of contract.
- 6.4 The Gloucester House and Durham Court project aims to deliver a high quality residential led development of 214 new homes and an energy centre for the South Kilburn neighbourhood heating system. Westminster City Council Officers have confirmed their intention to redevelop Carlton Dene, located directly opposite the Gloucester House and Durham Court development site to the south east. Officers will ensure the Council's appointed design team work collaboratively with Westminster's appointed Carlton Dene design team, to ensure in so far as is practical and possible, a joint approach to urban design and place-making across the two development sites. Officers are keen to ensure the two development complement and respond positively to each other.

Masefield House and Wordsworth House Progress Update

- 6.5 Masefield House and Wordsworth House development site as identified on plan E at Appendix 1 has previously been earmarked for a new combined primary school. The Council has appointed Alison Brooks Architects Limited to undertake a review of the feasibility and deliverability of the proposals for the site alongside a review of the masterplan design proposals for the wider surrounding area as identified on plan F, Appendix 1. The review area includes Austen and Dickens House, Wordsworth and Masefield House, Blake Court, the Immaculate Heart of Mary RC Church and the attached Marian Community Centre, Kilburn Park, Carlton Vale Infant School and Kilburn Park Junior School and Site C. Officers will update the Executive on the outcome of the design review once complete. The review will test the option of a larger 4 form of entry primary school and generate an evidence base to inform Phase 3 of the school's expansion business case. The study will also inform the Masefield and Wordsworth vacant possession strategy, confirming the Council's development objectives for the site to inform and support a CPO.

Statutory Consultation with Secure Tenants Occupying Properties in Phase 2b in relation to Ground 10A, CPO & Draft Allocation Policy

- 6.6 A key principle of the phasing strategy for the South Kilburn Project is that the new homes developed will, where the relevant needs are met, be made available to residents living within sites earmarked for development in the next phase. On this basis the new homes which will be developed on the Phase 1b sites will primarily be for existing residents in Gloucester House, Durham Court, Masefield House and Wordsworth House (together defined as 'Phase 2b'). This in turn will ensure vacant possession of subsequent and significant development sites to enable further schemes to come forward and more secure tenants to be rehoused in new homes.
- 6.7 On 15th October 2012 the Executive authorised officers to review the strategy for securing vacant possession from secure tenants in Phase 2b. Presently the Phase 1 Allocation Strategy is based on using Ground 10A Housing Act 1985. Authority was granted to consider including the use of CPO powers and undertake all necessary consultation legally required to implement a change if recommended.
- 6.8 The rationale for changing the Allocation Policy in relation to Phase 2b and the Council's means of obtaining vacant possession from secure tenants is based upon the requirement to have absolute certainty that vacant possession can be achieved by an agreed date, providing the Council and its developer partners with confirmation of delivery of, not only the scheme on site, Phase 2b, but also the rolling decant and delivery programme across the regeneration programme as a whole. The use of Ground 10A alone does not give the Council the required certainty of vacant possession. Officers engaged Leading Counsel to consider and advise upon the Phase 2b Allocation Policy's structure, content and associated consultation strategy.
- 6.9 Leading Counsel considered the need for the decanting secure tenants to move from Council rents to Target Rents (as authorised by the Executive on 13th February 2012) when they decant and become a tenant of a registered provider. Leading Counsel also considered the impact of the Council's aspiration to create a truly sustainable mixed community, resulting in the replacement decant accommodation, providing a shortage of affordable 1 bedroom properties.
- 6.10 Leading Counsel advised the Council to obtain vacant possession of development areas on the South Kilburn Estate using two means, namely:
- (a) To seek to obtain possession of residential premises held under secure tenancies by relying upon section 84 and Ground 10A in schedule 2 of the Housing Act 1985; and
 - (b) To make a compulsory purchase order relying on section 226(1)(a) of the Town and Country Planning Act 1990 ("TCPA 1990").
- 6.11 In accordance with Leading Counsel's advice it is proposed that to provide certainty for the Council to deliver the South Kilburn Regeneration programme on time the Council will seek possession by Court proceedings under the Housing Act Schedule 2 Ground 10A, until the Council has a confirmed CPO in respect of the homes concerned. After which, the Council shall proceed to secure possession by agreement or using the compulsory purchase powers derived from the confirmed CPO.
- 6.12 The use of Ground 10A in isolation is not considered sufficient to obtain vacant possession of properties due for redevelopment, in accordance with the Programme for delivery. Whilst the Council may be able to obtain a possession order enabling some or all of the proceedings to be heard together, if a substantial number of secure tenants do not leave voluntarily and separate possession proceedings are required, there is scope for substantial delay under Ground 10A proceedings which may result in the Council incurring significant common costs; delay to the delivery of the site concerned and to the wider regeneration programme and a potential increase in health and safety risks on site.
- 6.13 Rehousing secure tenants using CPO will remove the perceived benefit of adjudication by the court of whether the new home is suitable alternative accommodation (in relation to each possession order). Secure tenants will however have the right to object to the CPO and to appear at an inquiry. In addition, the Phase 2b Allocation Policy incorporates an independent dispute resolution process allowing an independent body to review at a secure Tenant's request the suitability of the alternative accommodation offered.

- 6.14 The proposed process for allocating properties to secure tenants in Phase 2b is set out in the bespoke Allocation Policy set out at Appendix 15. Secure tenants will be made one offer of suitable alternative accommodation that meets the housing need of the secure tenant and their household in accordance with this policy.
- 6.15 Officers are undertaking consultation with secure tenants occupying properties in Phase 2b on three proposals: (i) statutory consultation in connection with seeking approval of the Secretary of State for use of Ground 10A of the Housing Act 1985; (ii) consultation on the Council's proposal to make a CPO on properties in Phase 2b that are currently occupied by secure tenants; and (iii) consultation in connection with a draft Allocation Policy for Phase 2b. The consultation is being undertaken in accordance with the consultation strategy set out at Appendix 16 and the statutory consultation required with secure tenants in order to rely on Ground 10A and statutory consultation required by Section 105 of the Housing Act 1985 on certain changes in practice and/or policy in relation to the proposal to make a CPO and the draft Allocation Policy for Phase 2b. Once completed, a consultation report will be produced for the Executive to consider. The consultation report will include a summary of the feedback received from secure tenants occupying properties in Phase 2b in response to the three consultation proposals and the Council's responses to the feedback received. Depending on the outcome of the consultation Executive approval may be sought to authorise the Director of Regeneration and Major Projects to seek the Secretary of State's consent to the disposal and development of Phase 2b for the purpose of Ground 10A of Schedule 2 to the Housing Act 1985 and authorise the final Phase 2b Allocation Policy.

7. THE POST OFFICE SITE AND 4-26 STUART ROAD PROGRESS UPDATE

- 7.1 On 18th July 2011 the Executive authorised incorporating the redevelopment of 4-26 Stuart Road within the current phase of the South Kilburn Redevelopment Programme, with the intention of bringing forward the comprehensive redevelopment of the site with the Argo Business Centre and former Post Office. The Council was unable to reach agreement with the owners of the Argo Business Centre and the Argo Business Centre landowners now intend to bring forward the redevelopment of their site in isolation. A planning application for the Argo Business Centre site has been approved. The associated Section 106 Agreement ensures that the development will provide additional affordable homes to support the South Kilburn Regeneration Decant Programme.
- 7.2 The owner of 5-9 Chippenham Gardens and the Post Office site is interested in working with the Council to bring forward the comprehensive redevelopment of the Post Office Plus Site as shown edged red on Plan G at Appendix 1. On 15th October 2012 the Executive noted Officers' intention to progress discussions with the landowner of 5-9 Chippenham Gardens and the Post Office site to ascertain if the Council could enter into a development agreement to comprehensively redevelop the Post Office Plus Site.
- 7.3 The Council has undertaken an initial design feasibility study of the potential development options for the site. External legal advisors and an agent have also been engaged to advise the Council in their negotiations with the landowner. Discussions will commence shortly. If an 'in principle' agreement can be reached, Executive approval would be sought prior to any contract award.

8. SITE 18 QUEENS PARK PROGRSS UPDATE

- 8.1 On 18th July 2011 it was reported to the Executive that there are proposals to locate a 130m2 air shaft on the south-west corner of Site 18 to service the proposed High Speed 2 (HS2) tunnel that would be built under this site. Given the present uncertainty the HS2 proposals present, Officers do not intend to procure a developer partner at this stage to build out the planning permission secured. Officers responded to the HS2 safeguarding consultation and made representation to seek to remove or minimise the impact of the vent shaft on this site. Officers proposed an alternative location at Canterbury Works. Officers will continue to make representations to HS2.

9. PHASE 3 PROGRESS UPDATE

Peel Precinct, 97-112 Carlton House and 8-14 Neville Close ("Peel")

- 9.1 The Council is committed to delivering a new Healthy Living Centre (HLC) within South Kilburn to address prevalent health inequalities. It is intended the HLC should comprise space for existing GP

practices that would relocate into the space, and have potential for some additional space for complimentary health uses such as minor surgery. For a variety of reasons previous attempts to progress the development of HLC have been unsuccessful. Officers are however keen to explore if the delivery of a new HLC can be brought forward within the Peel development (shown on Plan H, Appendix 1) as part of Phase 3 of the regeneration programme.

- 9.2 The Executive should note officers intend to consider, in partnership with local residents and the Brent Clinical Commissioning Group, if the comprehensive redevelopment of Peel could deliver a mixed use scheme that would provide sufficient enabling residential development and other appropriate uses to make viable the development of the HLC.
- 9.3 Gort Scott Architects have been appointed to explore the viability and feasibility of progressing the comprehensive redevelopment of Peel to deliver a HLC. Consultation will be undertaken with key stakeholders in accordance with the consultation strategy attached at Appendix 17. If the feasibility study demonstrates the proposals are viable, officers will look to develop a robust business case to support the delivery of the Peel project and report back to the Executive.

10. ACQUIRING PROPERTIES IN PHASE 3 AND 4 BY NEGOTIATION

- 10.1 Members are referred to the recommendation set out in paragraph 2.5.1 above. The Council intends to seek to purchase leasehold properties by way of negotiation that are located in Phases 3 and 4 of the South Kilburn Master Plan Area. The Assistant Director of Property and Asset Management has authority under paragraph 4.3 of Part 4 of the Council's Constitution to acquire on behalf of the Council properties up to the value of £300k per unit (if acquired, disposed of or granted at a premium does not exceed £300k in value). The Council does not intend to apply for a CPO in respect of the properties at Phases 3 and 4 at this stage. However, in order to assist the delivery of the South Kilburn Regeneration scheme, paragraph 2.5.1 seeks the authorisation of the Executive to grant delegated authority to the Director of Property and Assets, in consultation with the Director of Finance where applicable, to acquire properties in Phases 3 and 4 of the South Kilburn Master Plan Area so that it will not be necessary for officers to seek the approval of the Executive every time officers propose to acquire a property in Phases 3 and 4.
- 10.2 Officers will seek legal advice as to whether a decision to acquire a property in Phases 3 and 4 of the South Kilburn Masterplan Area will amount to a "Key Decision" for the purposes of paragraphs 26 to 29 of the Access to Information Rules as set out in Part 6 of the Council's Constitution.

11. LEGAL IMPLICATIONS

Procurement of developer partners for Bronte House & Fielding House

- 11.1 As a result of recent rulings in the European Court of Justice, if the Council utilise a development agreement containing positive obligations on the part of the developer to undertake the development concerned and giving direct economic benefit to the Council in respect of any of the land, it will need to undertake an EU procurement process to find a partner to carry out the development. The Court of Justice has ruled that development agreements cannot be viewed as merely part of a land transfer, because they impose detailed requirements as to the development to be constructed and are therefore a form of procurement of works.
- 11.2 A developer partner has been identified using mini-competition under the South Kilburn Developer Framework for Phase 2a i.e. Bronte House and Fielding House. The South Kilburn Developer Framework is a framework established by the Council in accordance with the Public Contracts Regulations 2006 (the EU Regulations). Establishment of the South Kilburn Developer Framework was agreed by the Executive on 14 March 2011 and following expiry of the mandatory minimum standstill period, developers were appointed to it. The use of the South Kilburn Developer Framework to identify a developer partner is considered to satisfy the requirements of recent rulings in the Court of Justice as detailed in paragraph 4.3.
- 11.3 The EU Regulations not only regulate the establishment of the framework agreement, they also prescribe rules and controls for their use. Following the establishment of the South Kilburn Developer Framework, development agreements may be called off under it without the need for them to be

separately advertised and procured through a full EU process. There are, however, strict rules that apply to the call-off process to ensure fairness and transparency and these have been incorporated into the call-off procedure for the South Kilburn Developer Framework.

- 11.4 The award of the development agreement for the appointment of developer partners is also subject to the council's own Standing Orders and Financial Regulations in respect of High Value Contracts (the value of the Bronte and Fielding development agreement is likely to be such that it is classed as a High Value contract). As a result, once a developer has been identified following mini-competitions under the South Kilburn Developer Framework, Executive approval to the development agreement will be required. As the Development Agreement is being prepared for signature, Officers recommend that the Executive delegate authority to the Director of Regeneration & Major Projects in consultation with Director of Legal & Procurement to award and enter into the Development Agreement with the preferred bidder to redevelop Bronte House and Fielding House.

Procurement of a developer partner for Site 11b (Legal)

- 11.5 To dispose of Site 11b a developer partner has been procured through an OJEU compliant procurement process. The procurement is for a works contract under the Public Contracts Regulations 2006 (the EU Regulations). Pinsent Masons solicitors have advised on the drafting of the OJEU and approved the form of tender and tender documentation to ensure EU Procurement Regulations were complied with.
- 11.6 The award of the development agreement for the appointment of developer partner is also subject to the Council's own Standing Orders and Financial Regulations in respect of High Value Contracts (the value of the contract with the developer partners such that it will be classed as High Value contracts). As a result, once a developer has been identified following the EU Procurement, Executive approval to award the development agreement is required. Officers recommend that the Executive delegate authority to the Director of Regeneration & Major Projects in consultation with Director of Legal & Procurement to award and enter into the Development Agreement with the preferred bidder to redevelop Site 11b and if for any reason that cannot be achieved, to enter into the Development Agreement with the reserve bidder on the same terms as set out in Section 4 of this report.

Compulsory Purchase Order[s] (Legal)

- 11.7 The Council has power to make a compulsory purchase order under section 226(1)(a) of the Town and Country Planning Act 1990 if it thinks that the acquisition will "facilitate the carrying out of development, redevelopment or improvement on or in relation to the land". Under section 226(1A) the Council must not exercise the power under sub paragraph 226(1)(a) unless it thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects –

- (a) the promotion or improvement of the economic wellbeing of their area;
- (b) the promotion or improvement of the social wellbeing of their area;
- (c) the promotion or improvement of the environmental wellbeing of their area.

- 11.8 Compulsory purchase orders must only be made if the Council is satisfied that there is a compelling case in the public interest to do so. Para. 17 of Part 1 of the Memorandum to ODPM Circular 06/04 states:

"A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention."

- 11.9 For the reasons set out in this report and the report to the Executive Committee meetings on 19th September 2011, 23rd June 2010, 15th November 2010 and 18th July 2011, it is considered that there is such a compelling case for properties within Phase 2 and Phase 3 of the proposed regeneration

programme and that the public interest requires that the CPO be made in order to carry through the necessary redevelopment of the CPO Land.

- 11.10 Further, in making the CPO there should be no impediments to its eventual implementation. Para's 22 and 23 of Part 1 of the Memorandum to ODPM Circular 06/04 advise (in part):

"In demonstrating that there is a reasonable prospect of the scheme going ahead, the acquiring authority will also need to be able to show that it is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account. These include the programming of any infrastructure accommodation works or remedial work which may be required, and any need for planning permission or other consent or license. Where planning permission will be required for the scheme, and has not been granted, there should be no obvious reason why it might be withheld."

- 11.11 Executive will note that there will be sufficient funds available to meet the compensation costs for the acquisition of the land through funds secured from previous and future land receipts. Officers consider that there is a reasonable prospect of the scheme going ahead subject to continuation of the programme. Whilst planning permission has not been granted for the development, it is considered that there is no obvious reason why it might be withheld, taking into account that a Masterplan has already been approved albeit that it is now intended to revise this slightly. Accordingly, it is considered that there are unlikely to be any impediments to implementation for the CPOs for Phase 2 and Phase 3 sites.

- 11.12 It is necessary to consider the human rights implications of making CPOs. This information is covered in the 23rd June 2010 and the 15th November 2010 Reports to Committee and below.

Human Rights Act 1998 (Legal)

- 11.13 The Human Rights Act 1998 places direct obligations on public bodies such as the Council to demonstrate that the use of compulsory purchase powers is in the public interest, and the use of such powers is proportionate to the ends being pursued.
- 11.14 It is acknowledged that the compulsory acquisition of land will amount to an interference with the human rights of those with an interest in the affected land. These include rights under Article 1 of the First Protocol of the European Convention on Human Rights ("ECHR") (which provides that every natural or legal person is entitled to peaceful enjoyment of his possessions) and Article 8 of the ECHR (which provides that everyone has the right to respect for his private and family life, his home and his correspondence).

- 11.15 In this instance, Officers are of the view that there is a compelling case in the public interest for the compulsory acquisition of the various interests referred to in this report and that the need case for the acquisition of such rights outweighs the interference with those rights, and that the use of compulsory purchase powers in these areas is therefore proportionate. Without the use of these powers, the much-needed regeneration and redevelopment of the South Kilburn area will not be achievable, as there is no possibility that all of the land necessary to deliver the phased South Kilburn Regeneration Programme will be made available to the Council within a reasonable and appropriate timescale.

Ground 10A of Schedule 2 to the Housing Act 1985 (Legal)

- 11.16 The Council is required to obtain the approval of the redevelopment scheme from the Secretary of State when seeking to re-house secure tenants who will not leave the properties that are due to be demolished in furtherance of the redevelopment scheme. Before seeking such approval, the Council is required to consult with affected tenants. Approval from the Secretary of State will enable the Council to use Ground 10A of Schedule 2 to the Housing Act 1985. The paragraph states that the landlord must first:

- (a) Serve a notice in writing on all secure tenants whose dwellings are affected by the scheme, stating: the main features of the scheme (or the scheme as it will be after a proposed variation to it); that the Secretary of State's approval is to be sought; and the effect of such approval in relation to proceedings for possession of the dwellings;

- (b) Inform the tenants that they have a specified period (which must be at least 28 days) in which to make representations to the landlord; and
- (c) Consider any representations received during that period.

11.17 Unlike a tenanted transfer, however, no formal ballot is required to be carried out. However, the Secretary of State, before giving his consent, will consider the following:

- (a) The effect of the scheme on the extent and character of housing accommodation in the neighbourhood;
- (b) Over what period of time it is proposed that the disposal and redevelopment will take place in accordance with the scheme;
- (c) To what extent the scheme includes provision for housing provided under the scheme to be sold or let to existing tenants or persons nominated by the landlord.

11.18 The landlord, in this case, the Council, must not apply to the Secretary of State for approval of a scheme unless the statutory consultation procedure has been carried out.

Disposal of Sites – Secretary of State's consent (Legal)

11.19 At the appropriate time, Officers will seek the approval of the Executive to dispose of relevant sites that need to be disposed of pursuant to the South Kilburn regeneration scheme to relevant organisations/housing providers at relevant values and seek the approval of the Executive to apply to the Secretary of State to obtain his consent to dispose of such sites, either under the relevant General Consents that have been granted under the Housing Act 1985 or the Local Government Act 1972 or pursuant to specific applications to the Secretary of State. In respect of Housing Revenue Account land, consent is required under sections 32 to 34 and 42 to 43 of the Housing Act 1985. If the sites are disposed of for less than market value or financial assistance is provided by the Council consent is also required from the Secretary of State under section 25 of the Local Government Act 1988. In respect of Council owned land that is not Housing Revenue Account land, the Council must take into account the content of section 123 of the Local Government Act 1972 and either confirm that the General Consent under that section applies or apply to the Secretary of State to obtain his specific consent to the disposal of the necessary sites.

11.20 The Prudential Capital Finance System, which was introduced on 1st April 2004, under regulation 12(1) [of ...] imposes a pooling requirement (percentage of capital receipt to be payable to the Secretary of State) on receipts from sales of housing land which regulation 1(5) defines as any land, house or other building which was held within the Housing Revenue Account immediately before its disposal. The pooling rate for HRA assets (non RTB sales) is 50%. However, the regulations allow for certain types of capital receipts to be treated as reduced before calculating the pooling percentage by reference to the "capital allowance", which is the total of past or planned expenditure on affordable housing and regeneration projects as specified in regulations 17 and 18 of [...]. The overall effect of the capital allowance is to allow capital receipts to be recycled into the authority's own affordable housing and regeneration projects. Currently there are sufficient resources in the authority's Capital Allowance to provide that none of the forecast capital receipts earmarked to this scheme would need to be pooled.

Appropriation of Sites – Including Secretary of State's consent (Legal)

- 10.21 Under section 19 Housing Act 1985, a local authority shall not without the Secretary of State's consent, appropriate any part of the Sites which consist of a house or part of a house for any other purpose.
- 10.22 The Secretary of State's consent may be given either generally to all local housing authorities or to a particular authority or description of authority and either in relation to particular land or in relation to land of a particular description and it may be given subject to conditions.
- 10.23 Section 122 of the Local Government Act 1972 provides that a principal Council may appropriate for any purpose for which the Council are authorised to acquire by agreement land which belongs

to the Council and is no longer required for the purpose for which it is held immediately before the appropriation

- 10.24 Appropriation is subject to third party rights over the land and in respect of the parts of the Sites at South Kilburn which consist of a house or part of a house requires the prior consent of the Secretary of State under Section 19 of the Housing Act 1985
- 10.25 Section 237 of the Town and Country Planning Act 1990 provides where land has been acquired or appropriated for planning purposes interests or rights such as easements, private rights of way or restrictions against certain uses which may exist for the benefit of third parties are overridden on erection, construction or carrying out or maintenance of any building in accordance with planning permission, subject to payment of compensation. The practical effect is that in general interests or rights which may exist for the benefit of third parties do not delay or obstruct the development. This provides effective assurance to the developer that he will be able to undertake works in accordance with planning permission.
- 10.26 The land must no longer be required for the purpose for which it is held immediately before appropriation. This test will be satisfied by deferring the date of the appropriation to a time when it is clear that the scheme will proceed. Once the appropriation is effected, the appropriated land will be held for planning purposes.

12. FINANCIAL IMPLICATIONS

Financial implications for the South Kilburn Programme, financial year 2013/14

- 12.1 The table below summarises the current forecast position for the progression of the South Kilburn Regeneration Project in 2013/14.

South Kilburn Regeneration Programme	£
<u>Forecast Expenditure</u>	
General Development Costs	982,000
Phase 1a	0
Phase 1b	0
Phase 2a	3,569,890
Phase 2b	2,392,637
Land Acquisitions	0
Total Forecast Expenditure	6,944,527
<u>Forecast Resources</u>	
Surplus Resources	(1,742,700)
Forecast Capital Receipts to be utilised	(5,201,827)
Total Forecast Resources	(6,944,527)
Forecast (Surplus)/Deficit on Programme	0

- 12.2 As indicated in the table above, the resource envelope for taking forward the South Kilburn Regeneration Programme in 2014/15 and beyond is determined by the level of the capital receipts to be secured from the disposals of long leases of land.
- 12.3 Indicative project budgets for the Phase 2 sites; Gloucester House and Durham Court are summarised at Appendix 18 (restricted).
- 12.4 The financial model for South Kilburn is for the regeneration scheme to be self financing from this point forward. In other words, the Council should be able to progress the scheme on an ongoing basis within the cash envelope generated from ongoing disposals, provided it remains committed to ring fencing these receipts into South Kilburn. This delivery strategy has been agreed and endorsed by the Homes and Communities Agency.
- 12.5 The South Kilburn Financial Model was recently reviewed by Navigant Consulting based on the intelligence gathered through the deliver of Phase 1b. The model was revised based on the assumption that future phases of the regeneration programme would be delivered without grant subsidy.

12.6 Oversight of this project is provided by an officer board that regularly monitors progress and reviews updated costs plan information. In the event of any cost overruns on this project, the board will review all possible options in order to bring the cost plan back into budget. In the event that this is not possible, then any cost overrun will sought to be met from within existing Regeneration and Major Projects budgetary provision.

Financial implications for the Housing Revenue Account

12.7 In the event that HRA dwellings are held void pending demolition, or are demolished, then the HRA will no longer receive the rent income for those dwellings. This loss of rent income will need to be addressed as part of the annual HRA budget setting process so that HRA budgeted expenditure is reduced to reflect that reduction in income.

12.8 The estimated Rental Loss and net cost to the HRA are as below:

Phase 2a:	£1,234,000
Phase 2b:	£1,343,000
Peel:	£324,000

12.9 Following the implementation of the new Housing Self Financing system in April 2012, the Council HRA Account will no longer received any Housing subsidy, so the net loss to the HRA will be the estimated rental income loss.

13. DIVERSITY IMPLICATIONS

13.1 South Kilburn is identified as a priority for driving economic opportunity and regeneration within Brent – Our Future 2010-2014 (Brent Borough Plan). The Regeneration Strategy for Brent 2010-2030 identifies the transformational change of South Kilburn within strategic priority 1. The area was previously a New Deal for Communities area and as such, all interventions are specifically targeted at those people who suffer disadvantage in society. South Kilburn Neighbourhood Trust, through its widening participation seeks to find ways of involving and engaging with all local residents and particularly those who traditionally are 'hard to reach'. There has been and will continue to be widespread consultation and community engagement as proposals for the physical regeneration of the area are developed and delivered.

13.2 The new homes in South Kilburn are available to all tenants within the neighbourhood regardless of ethnicity, nationality or national origin; age, gender, sexuality, disability or faith. A proportion of new homes are designed to be wheelchair adaptable while the allocations process considers the housing needs of tenants in respect of issues that maybe derived from individuals' ethnicity, nationality or national origin; age, gender, sexuality, disability or faith. The potential impact of the recommendations relating to how the Council takes possession of properties occupied by secure tenants within blocks earmarked for redevelopment within Phase 2b is considered in the Equalities Analysis at Appendix 19.

14. STAFFING/ACCOMMODATION IMPLICATIONS

14.1 There are no specific staffing or accommodation implications associated with the proposals contained within this report.

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