



Executive
23 June 2010

**Report from the Directors of
Policy and Regeneration and
Housing and Community Care**

Wards Affected:
Kilburn, Queens Park

South Kilburn Regeneration progress update

APPENDIX 2 AND APPENDIX 3 ARE NOT FOR PUBLICATION

1.0 Summary

- 1.1 This report summarises the progress made since February 2010 on the regeneration of South Kilburn, and sets out proposals for building on the momentum established by the Council over the past year. Specifically the report sets out proposals for re-investing the capital receipts secured through the advance stages of South Kilburn's regeneration, as agreed by the Executive in February 2010.

2.0 Recommendations

- 2.1 That the Executive note the progress made on the South Kilburn Regeneration project as set out in the report.
- 2.2 That the Executive agrees to progress the remainder of Phase 1 of the regeneration proposals in line with the overall phasing strategy, incorporating the redevelopment of Cambridge Court, Wells Court, Hicks Bolton House, Bond House and Ely Court.
- 2.3 That the Executive notes that officers are working with the Homes and Communities Agency to prepare a short, medium and long term investment strategy for South Kilburn.

- 2.4 That the Executive agree to officers progressing a detailed planning application for Cambridge Court (Zone 6i) and Wells Court (Zone 6D) for approximately 105 new homes.
- 2.5 That the Executive agree to officers progressing a detailed planning application for the Ely Court site (Zones 6iii and 6iv).
- 2.6 That the Executive agree to officers progressing a detailed planning application for the Bond House and Hicks Bolton House sites (Zones 13N and 13S).
- 2.7 That the Executive note that the new social rented housing developed as part of the above sites has the primary purpose to deliver decant accommodation for residents from blocks within Phase 2 of the regeneration programme.
- 2.8 That the Executive authorises officers to begin the procurement process to assemble an EU compliant framework of prospective developer partners to bring forward the remaining Phase 1 sites, and future Phase 2 and 3 sites.
- 2.9 That the Executive approve the assessment criteria set out in paragraph 3.24 which will be used to select prospective development partners for inclusion on the framework.
- 2.10 That the Executive authorise the making of compulsory purchase orders (CPOs) to acquire (a) the leasehold interests listed in appendix 2 (the CPO Land) and (b) any new rights in the CPO Land which may be required under section 13 of the Local Government (Miscellaneous Provisions) Act 1976.
- 2.11 That the Executive authorise the submissions of the CPOs, once made, to the Secretary of State for confirmation whilst at the same time seeking to acquire the land by private negotiated treaty on such terms as may be agreed by the Director of Finance & Corporate Resources.
- 2.12 That Members authorise the:
 - 2.12.1 Director of Housing and Community Care to enter into agreements and make undertakings on behalf of the Council with the holders of interests in the CPO Land or parties otherwise affected by the Scheme setting out the terms for the withdrawal of their objections to the confirmation of the CPOs and including the offering back of any part of the CPO Land not required by the Council after the completion of the development or the acquisition of rights over the CPO Land in place of freehold acquisition, where such agreements are appropriate;

- 2.12.2 Making of 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 CPOs be confirmed by the Secretary of State;
 - 2.12.3 Service of all requisite notices on the holders of the CPO Land relating to the making and confirmation of the CPOs;
 - 2.12.4 Director of Housing and Community Care to remove from the CPOs 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 CPOs (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);
 - 2.12.5 Director of Housing and Community Care within the defined boundary of the 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 compulsory powers by the Secretary of State;
 - 2.12.6 Director of Housing and Community Care, if so advised, to seek to acquire for the Council by agreement any interest in land wholly or partly within the limits of the CPO Land for which a blight notice has been validly served.
- 2.13 That the Executive agree to enter into a legal agreement with the South Kilburn Neighbourhood Trust (SKNT) requiring the repayment to SKNT of New Deal for Communities (NDC) Grant of up to £2.5m in 2009/10 and 2010/11 used to fund leaseholder buy backs in the next demolition phase of the South Kilburn redevelopment programme.
- 2.14 That the Executive notes the proposals set out in paragraphs 3.9-3.13 of this report to establish a consistent, effective and efficient approach to neighbourhood management in South Kilburn.
- 2.15 That the Executive delegate authority to the Director of Housing and Community Care in conjunction with the Lead Member for Housing, to agree the proposed allocation policy for phase 1 as set out in Appendix 1 to this report or with such amendments as he sees fit following consultation with residents and stakeholders.
- 2.16 That the Executive agree the ongoing community engagement and consultation approach set out in paragraphs 3.29-3.33 of this report.
- 2.17 That Members authorise the Director of Housing and Community Care to seek the Secretary of State's consent to the disposal and redevelopment of phase 1 sites on the estate for the purposes of ground 10A of Schedule 2 to the

Housing Act 1985 to enable the Council to apply for a court order to obtain vacant possession of residential dwellings let under secure tenancies.

3.0 Detail

3.1 This report sets out the progress made in relation to the regeneration of South Kilburn since July 2009, the date of the last update report to Executive on this topic. At that point the Executive agreed a revised delivery strategy, which can be summarised as follows:

- Ongoing revision of the South Kilburn master-plan, to include the inclusion of a new three form entry primary school, revised larger space standards for new housing, lower densities through reduced private housing, improved sustainability thresholds, new energy and waste strategies and improved open spaces.
- A revised phasing plan which aimed to bring forward a number of advanced sites specifically for decanting purposes, which in turn would allow the Council to prioritise moving existing tenants from homes in the poorest condition first.
- Specifically, for the Council to bring forward two sites – Albert Road East (Zone 11a) and Carlton Vale Roundabout (Zone 3c) – by securing detailed planning consent and then disposing of them as vacant sites to an RSL through an EU compliant procurement process.
- To support the necessary land assembly (including leaseholder buy backs) with Compulsory Purchase Orders as necessary.
- To progress proposals for community facilities, including a new sports hall in partnership with Westminster City Council and a proposed new healthy living centre.
- To support the establishment of the South Kilburn Neighbourhood Trust as a key component of the succession strategy for the South Kilburn New Deal for Communities programme.

3.2 Subsequently over the course of the year significant progress was made against this strategy. Since July 2009 the following has been achieved:

- Planning consent has been secured for a total of 153 new homes (113 of which will be social rented) at Albert Road (Zone 11a), together with 133 new homes (75 of which will be social rented) at Carlton Vale Roundabout (Zone 3c)
- London & Quadrant (L&Q) have been chosen as the Council's delivery partner for both of these sites, subject to securing Secretary

of State's consent (now received), vacant possession, enabling works on both sites to prepare them for development to be undertaken by the Council and grant funding from the Homes & Communities Agency (HCA)

- The Council entered into a Sale and Development Agreement with L&Q on 25 March 2010 conditioned on the above matters.
- The Sale and Development Agreement provides that on satisfaction of the conditions for the relevant site, L&Q will be granted a 999 year leasehold interest and shall develop the properties thereafter on the terms of the Agreement.
- Marshall House, on the Albert Road site, has been demolished and vacant possession secured. The enabling works on this site are due to be completed imminently. A stopping up order has been consulted on with regards to the Carlton Vale roundabout site, and officers are currently in discussion with officers from Westminster City Council in an attempt to resolve outstanding concerns raised by Westminster. The enabling highways works are expected to commence later in 2010. The Sale and Development Agreement is also conditional, in so far as it relates to the Carlton Vale Site, on obtaining the stopping-up order.
- Planning permission has also been granted for new homes to provide decant accommodation at Gordon House (to Network Housing Association) and the former Texaco garage site (to South Kilburn Neighbourhood Trust).
- HCA grant funding has been secured for all four of the above mentioned sites, and work is expected to begin on site for each of them within the next few months.
- The new sports hall, built in partnership with Westminster City Council and St Augustine's School, is now open and fully operational.
- The South Kilburn Neighbourhood Trust has been established and has built up an asset base which will ensure ongoing resources for social and economic regeneration.

3.3 At its meeting on the 15th February 2010 the Executive agreed to 'ring fence' the capital receipts secured from the disposal of the Albert Road and Carlton Vale sites into the ongoing regeneration of South Kilburn. This is both a condition of the grant secured from the HCA, but more importantly also allows us to continue to pro-actively deliver the next phase of regeneration in South Kilburn. The remainder of this report sets out how this resource will be invested to ensure that the Council builds on the momentum established over the last year and continues to drive forward the regeneration programme.

Development Programme for 2010-11

- 3.4 The regeneration of South Kilburn is guided by a phasing and business plan which works, both in terms of decanting existing tenants to new homes and in terms of generating an ongoing cashflow to allow the Council to progress regeneration. Accordingly the work programme for 2010 / 11 can be split into four main areas:
- (i) Beginning the decanting process for tenants who will be moving into the new homes being developed over the next two years at Albert Road, Carlton Vale, Texaco and Gordon House.
 - (ii) Putting in place arrangements to ensure consistent, co-ordinated and high quality neighbourhood management across South Kilburn.
 - (iii) Progressing a number of area wide studies, including a revised masterplan, a public realm strategy, proposals for a new school, arrangements for localised energy, and a comprehensive car parking strategy.
 - (iv) Securing planning consent for at least three further housing sites, and subsequently securing developer partners and grant funding to ensure their delivery

Each of these work areas will be underpinned by community engagement and consultation, ensuring that local people continue to be at the centre of the regeneration programme.

Decanting

- 3.5 A key principle of the phasing strategy for South Kilburn is that residents who currently live in some of the worst homes in the estate are amongst the first to be decanted into new homes. On this basis, the new homes which will be developed at Albert Road, Carlton Vale Roundabout, Texaco Garage and Gordon House will primarily be for existing residents in Bronte House and Fielding House. This in turn will ensure vacant possession of a subsequent (and significant) development site.
- 3.6 For the remaining new homes, priority will be given to any remaining tenants of blocks identified for the next phases of regeneration – namely Bond House, Hicks Bolton House, Ely Court, Cambridge Court and Wells Court.
- 3.7 The process for allocating tenants new homes is set out in the proposed Allocation Policy for Phase 1, at Appendix 1 to this report.
- 3.8 Transfer of the tenants is subject to permission being granted by the Secretary of State on Ground 10A of Schedule 2 to the Housing Act 1985. Although every effort will be made to obtain possession of the secure

tenanted properties with the tenant's consent, the Council will need, as a fallback position, to obtain the Secretary of State's consent to the disposal and redevelopment of the Estate for the purposes of obtaining vacant possession of the secure tenanted dwellings on ground 10A of Schedule 2 to the Housing Act 1985. The procedure required to obtain possession of the properties through these means is set out in Part V of Schedule 2 to the Housing Act 1985.

Neighbourhood Management

- 3.9 One consequence of a more fragmented delivery approach is that the Council needs to take a much stronger role in setting clear standards for both housing and neighbourhood management to ensure residents are provided with consistent, co-ordinated and high quality services.
- 3.10 In the case of housing management, this is dealt with through the processes for procuring delivery partners which places an emphasis (amongst other things) on the quality of housing management. The local Tenants Steering Group have also produce a model tenancy agreement, and all bidders are encouraged to use this as a template for the tenancies in the new homes.
- 3.11 Neighbourhood management is more complex and involves the arrangements for managing the public realm, open spaces and streets, as well as potentially in the future localised energy, construction training and community development.
- 3.12 The Council, in partnership with South Kilburn Partnership and South Kilburn Neighbourhood Trust, is taking the lead on developing the necessary partnership arrangements with RSL's operating in South Kilburn to ensure a consistent and co-ordinated approach. In essence this will mean a common specification for the level of service required, together with common or consistent arrangements for the delivery of these services. For all future delivery partners, it will be a condition of their selection that they sign up fully to the emerging proposals.
- 3.13 Residents will be fully involved in this process through the Tenants Steering Group, Homeowners Group and South Kilburn Housing & Infrastructure Committee. Officers are considering setting up a multi-landlord residents panel to focus on neighbourhood management and public realm issues.

Area Wide Strategies

- 3.14 There are a number of area wide strategies which need to be reviewed and/or progressed over the course of the next 6 months, in order to update the context for individual site developments in South Kilburn. These include:
 - (i) Refreshing and updating the masterplan for South Kilburn to take account of developing policy as appropriate.

- (ii) Initiating a public realm strategy for the whole of South Kilburn, setting out design guidance for existing and proposed open spaces, play areas, streetscapes and communal areas.
- (iii) Undertaking a full review of car parking arrangements across South Kilburn, and defining car parking requirements for future phases of the development. This strategy will also need to consider accessibility to alternative modes of transport, including rail, tube and buses.
- (iv) Bringing forward proposals for localised energy centres that will provide low carbon energy solutions to all residents in South Kilburn.
- (v) Undertaking a full feasibility study for a new three form entry primary school (combined infant and juniors) on a new site at the eastern end of Kilburn Park, to replace the existing Carlton Vale Infants and Kilburn Park Junior schools – as previously reported to Executive in July 2009.
- (vi) Continuing to work with local GPs and NHS Brent to bring forward a new Healthy Living Centre within Peel Precinct.

3.15 In bringing these area wide proposals forward, it will be critical that local residents are involved and consulted at appropriate times. The key vehicle for discussing these matters will be the well established Housing & Infrastructure Committee of the South Kilburn Partnership, which in turn will discuss when to undertake more formal and widespread consultation.

Development Sites

3.16 In February 2010, and as part of the condition of receiving grant funding from the Homes & Communities Agency for the initial housing sites, the Executive agreed to re-invest the capital receipts secured from the sale of both the Albert Road and Carlton Vale Roundabout sites into progressing the remaining Phase 1 sites in South Kilburn.

3.17 In line with this decision, it is proposed that the Council progress designs on the following sites with a view to submitting planning applications in the autumn of 2010:

- (i) Cambridge Court and Wells Court
- (ii) Ely Court
- (iii) Bond House and Hicks Bolton House

These sites have been chosen in line with the overall South Kilburn phasing plan. Taken together they will continue to deliver the necessary decant capacity to ensure the regeneration programme can continue to roll forward. Due to its proximity to Kilburn Park tube station, the Cambridge and Wells Court site in particular also has the potential to deliver a significant amount of private dwellings which will help to both re-dress the tenure balance of South Kilburn and generate further capital receipts to maintain the cashflow of the scheme overall.

- 3.18 Design teams will be appointed to take each scheme through to full planning permission (RIBA Stage C or D), with payments on a staged basis pending sign off by the South Kilburn Project Board at each stage. The contract values are all within the delegated threshold for officer approval.

Delivery Mechanisms

- 3.19 Previous Executive reports have identified the potential of a local asset backed joint venture vehicle as being one possible delivery method for South Kilburn. This would entail the Council establishing a new company with a private sector developer (or RSL) on a 50:50 shareholding basis. This approach has been soft market tested throughout the last year, and it is officers view that in the light of the current market conditions this approach is unlikely to offer the Council the best value for money, largely due to the high cost of equity. It also cedes control of the delivery process and timescale to a new organisation in which the Council only has a 50% stake. Whilst not ruling out the potential for the Joint Venture vehicle to be an attractive proposition at a later date, it is quite clear that in the medium term it is more advantageous to the Council to continue to act as ‘master developer’ and to bring to the market de-risked sites – ie. sites with vacant possession and the benefit of detailed planning consents.
- 3.20 In adopting this approach the Council needs to be aware of how to maximise its potential market in order to ensure the best possible choice of developer partners for each of the future sites. Following extensive advice and research, it has been determined that the best way of achieving this is to procure an EU compliant framework of prospective partners, from which the Council can ‘call off’ organisations on a needs basis, usually through the use of a mini competition restricted to members of the framework panel. The framework will predominantly be assembled on the basis of ‘quality’ criteria, with the call off arrangements weighted between ‘price’ and ‘quality’ based criteria to ensure the Council maximises its receipts.
- 3.21 Framework agreements can last for a maximum of four years, and so therefore the Council needs to identify all possible sites that may come forward over this period in order to signal to the market the prospective scale of the contracts. The framework itself must contain at least three prospective partners – although the optimum number to ensure choice and diversity for the Council would be five or six.
- 3.22 The framework would be procured using the EU Restricted procedure, and would initially require the Council to publish an advertisement in the OJEU, following which a standard two stage EU procurement process would ensue.
- 3.23 Call-off Contracts let under the EU compliant Framework Agreement in respect of particular sites would not need to be separately advertised, irrespective of their value.

3.24 In accordance with Contract Standing Orders 89 and 90, pre-tender considerations have been set out below for the approval of the Executive.

Ref.	Requirement	Response	
(i)	The nature of the contract.	Development of future sites within the London Borough of Brent, predominantly in South Kilburn which are in accordance with the master plan for South Kilburn and form part of the South Kilburn regeneration strategy.	
(ii)	The estimated value.	<p>Sites to be included could include, but may not be limited to:</p> <p>Cambridge & Wells Courts - £11m</p> <p>Ely Court - £5m</p> <p>Hicks Bolton and Bond House - £11m</p> <p>Bronte and Fielding House - £16m</p> <p>Durham Court - £7m</p> <p>Carlton House - £7m</p> <p>Peel Precinct – 26m</p> <p>Hereford House - £10m</p> <p>Albert Road west - £16m</p> <p>Queens Park Roundabout site - £25m</p>	
(iii)	The contract term.	The framework panel will be appointed for a 4 year period. Call-off contracts let under the framework may extend beyond the four year term.	
(iv)	The tender procedure to be adopted including whether any part of the procedure will be conducted by electronic means and whether there will be an e-auction.	OJEU compliant restricted procedure procurement route. Once the framework is established, call off will normally be by way of mini competitions which will include both price and quality components.	
v)	The procurement timetable.	<p>Indicative dates are:</p> <p>Adverts placed</p> <p>Expressions of interest returned</p> <p>Shortlist drawn up in accordance with the Council's approved criteria</p>	<p>July 2010 OJEU</p> <p>Mid September 2010</p> <p>Mid October 2010</p>

		Invite to tender	October 2010
		Deadline for tender submissions	End November 2010
		Panel evaluation and interviews	End November – mid December 2010
		Panel decision	December 2010
		Report recommending Contract award circulated internally for comment	January 2011
		Executive approval	
		Mandatory minimum 10 calendar day standstill period – notification issued to all tenderers and additional debriefing of unsuccessful tenderers (contracts covered by the full EU Regulations only)	February 2011
		Framework Agreement entered into and initial sites "called off"	15 th March 2011
(vi)	The evaluation criteria and process.	<p>Shortlists are to be drawn up in accordance with the Council's Contract Procurement and Management Guidelines namely the pre qualification questionnaire and thereby meeting the Council's financial standing requirements, technical capacity and technical expertise. The panel will evaluate the tenders from shortlisted bidders on the basis of "most economically advantageous tender criteria" (MEAT), on the basis of 60% quality and 40% price. The quality considerations will include (but not necessarily be limited to) the following:</p> <ul style="list-style-type: none"> • Shared vision for South Kilburn • Large scale development capacity • Proposals relating to mixed tenure residential development including intermediate housing • Proposals relating to place making including mixed use development 	

		<ul style="list-style-type: none"> • Commitment to high quality residential design • Sustainability commitment to and proposals for developing to a minimum level of Sustainable Homes Code Level 4; • Commitment to and proposals for the provision of localised energy solutions • Proposals as to sound construction management and health & safety • Commitment to employment and training initiatives • High standard of housing management proposals independently assessed. • Proposals as to developing neighbourhood management arrangements in a multi landlord estate including management of high quality public realm. • Application of equal opportunities and diversity policies in social housing development and management • Proposals for effective tenant and resident liaison and capacity to deliver in South Kilburn • Added value – eg tenant relocation support, leaseholder relocation support, on and off site decant support • Ability to secure additional resources, including HCA grant funding
(vii)	Any business risks associated with entering the contract.	By establishing a framework the Council is not committing to utilising the framework for any sites, including those listed in section (i) above.
(viii)	The Council's Best Value duties.	The Procurement process will ensure Best Value is achieved.
(ix)	Any staffing implications, including TUPE and pensions.	No staffing implications relating to TUPE or pensions.
(x)	The relevant financial, legal and other considerations.	This procurement process is in line with The Council Standing Orders and EU Procurement Regulations. Trowers & Hamblins are currently retained to give specialist legal advice.

Land and Property Issues

- 3.25 In order to underpin the regeneration of South Kilburn it is important that the Council continue to acquire property that it critical to its regeneration plans. Across the estate there are a number of sites which the Council is seeking to acquire in order to aid regeneration, and these will be reported to Executive to secure the necessary authorisation at the appropriate time.
- 3.26 There are also over 200 leaseholders across the blocks in South Kilburn which have been identified for demolition. It is clearly in the Council's interest

to acquire these properties as early as possible, in order to assist in assembling sites with vacant possession. The Council will attempt to secure these properties by negotiation wherever possible, but this report also seeks authorisation for officers to make use of Compulsory Purchase powers for properties within Phase 1 and some of Phase 2 of the regeneration programme if necessary. These properties are listed at Appendix 2.

- 3.27 Since 2009 a number of leaseholder buy backs have been funded through the use of New Deal for Communities (NDC) grant, to the value of £2.5million. It is a condition of the use of NDC grant, as stipulated by the Government Office for London, that the Council enter into a legal agreement to repay this sum back to the South Kilburn Neighbourhood Trust (SKNT) to ensure it is recycled back into the regeneration of South Kilburn. Officers are currently working with the SKNT Board to prepare a capital strategy for the Trust which will ensure the funding is spent on contributing to the regeneration programme.
- 3.28 In the process of bringing forward the Marshall House and Carlton Vale sites issues relating to the Council's title came to light. These predominately centred around areas of unregistered land and generic rights granted by Right To Buy Leases on the South Kilburn estate which could be infringed by the re-configuring of the estate and development of open spaces. These issues were dealt with in respect of the above sites by way of a speculative Land Registry application (resulting in registration of the relevant land) supported by a statutory declaration and, in the case of the rights, an indemnity insurance policy.

Community Consultation

- 3.29 Community participation, engagement and consultation has consistently been at the heart of the Council's approach to regenerating South Kilburn. The coming year will require the Council to enter into an increasingly complex set of dialogues with local residents with regards to a plethora of issues. It is therefore essential that the Council has a clear strategy for consultation moving forward, and that a range of consultation techniques are employed to ensure continued and re-invigorated community engagement.
- 3.30 The first area of community dialogue is specifically with those residents who will be moving into the new homes at Albert Road, Carlton Vale Roundabout, Texaco and Gordon House. A significant majority of these tenants will come from Bronte and Fielding House. In order to facilitate this dialogue a new Bronte & Fielding Residents Association is proposed to be established by August 2010. The South Kilburn Housing Team will co-ordinate dialogue with individual tenants with regard to their future needs and decanting arrangements.
- 3.31 The second area of community dialogue is with leaseholders from across South Kilburn, and particularly those who own homes in the remaining Phase 1 blocks. Again, the South Kilburn Housing Team will maintain regular communications.

- 3.32 The third area of community engagement will be around the design of the proposed new homes on the remaining Phase 1 sites. The proposition is that each site will have its own design group which will meet at key points in the design process and act as a sounding board for the architects and design teams. These groups will be facilitated by the project managers for each site, and will comprise of residents from the blocks slated for decanting into the new buildings (ie. prospective future tenants of the new homes) as well as residents from adjoining blocks. Over and above this there will be a formal exhibition at pre-planning stage and the usual planning application consultations.
- 3.33 The Housing & Infrastructure Committee of the South Kilburn Partnership will be the overarching group considering the area wide proposals (car parking, energy, public realm). This group will advise on when more intensive and estate wide consultation is required on any particular issue.

4.0 Legal Implications

General

- 4.1 The Council has the power (under section 123 of the Local Government Act 1972) to dispose of any of its land. However, unless it grants a lease of 7 years or less, it must obtain the best consideration reasonably obtainable, unless it obtains the consent of the Secretary of State to the transfer. Hence any transfer of the freehold or grant of a lease of any land within the South Kilburn area would require Secretary of State's approval, unless it was for best consideration. There is a General Consent available, but this only applies to sales at an undervalue of less than £2 million, and is therefore unlikely to be applicable. However, officers consider that by seeking offers for the sites from a number of RSLs, best consideration will in fact be secured.
- 4.2 As a result of recent rulings in the European Court of Justice, if the Council utilise a development agreement in order to set out detailed specifications in respect of development of any of the land, it will need to undertake an EU procurement process to find a partner to carry out the development. The ECJ has ruled that development agreements (which contain such detailed specifications) 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.
- 4.3 Supplementary planning documents (SPD) can be adopted in order to expand on the Council's adopted policies in its UDP and the emerging Local Development Framework in order to provide more detailed information than can be contained in the policies themselves. There are detailed regulations made under the Planning and Compulsory Purchases Act 2004 setting out the procedure for consulting on, and subsequently adopting SPD's. Provided the correct procedure is followed, SPD's can be given considerable weight in determining planning applications. Accordingly if an amended

masterplan for South Kilburn is adopted as an SPD then it will be a weighty material consideration in considering future developments within the South Kilburn area.

Procurement of Developer Partner

- 4.4 This tender is being procured in accordance with EU Regulations and specialist advice has been sought from Trowers & Hamlins the Council's legal advisors on this project. The Framework Agreement will also be subject to the Council's Contract Standing Orders in respect of High Value contracts and Financial Regulations.
- 4.6 Once the tendering process is undertaken Officers will report back to the Executive in accordance with Contract Standing Orders, explaining the process undertaken in tendering the framework and recommending those parties to be included on the Framework Agreement.
- 4.7 As this procurement is subject to the full application of the EU Regulations, the Council must observe the requirements of the mandatory minimum standstill period imposed by the EU Regulations before the Framework Agreement can be concluded. The minimum period is 15 days where the Council notifies bidders of its decision by post or 10 days where the Council gives notice by electronic means.
- 4.8 The requirements include notifying all tenderers in writing of the Council's decision to conclude the Framework Agreement and the reasons for its decision including an explanation as to the characteristics and relative advantages of the successful bids and the successful bidder's scores (as well as the score of the recipient of the notice).
- 4.9 The standstill period provides unsuccessful tenderers with an opportunity to challenge the Council's decision if such challenge is justifiable. However if no challenge or successful challenge is brought during the period, at the end of the standstill period the Council can issue a letter of acceptance to the successful tenderers and the Framework Agreement can be entered into.

Use of the HCA Framework

- 4.10 As advised in the detail of the report the contracts for Architects are being procured under a Framework Agreement set up by the HCA. The EU Procurement Regulations allow the use of framework agreements (call-off contracts) and prescribe rules and controls for their procurement. Contracts may then be called off under such framework agreements without the need for them to be separately advertised and procured through a full EU process.
- 4.11 The Council's Contract Standing Orders state that no formal tendering procedures apply where contracts are called off under a Framework Agreement established by another contracting authority, where call off under the Framework Agreement is recommended by the relevant Chief Officer. However, this is subject to the Borough Solicitor advising that participation in

the Framework Agreement is legally permissible and approval to participate in the Framework being obtained from the Director of Finance and Corporate Resources. Such approval is currently being sought from the Borough Solicitor and the Director of Finance and Corporate Resources.

- 4.12 The contracts for architects have individual values of less than £500k each and as such officers have delegated authority to award the contracts pursuant to paragraph Paragraph 2.5 of Part 4 of the Constitution.

Compulsory Purchase Orders

- 4.13 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 or in relation to the land”. Under section 226(1)(A) the Council must not exercise the power under sub paragraph (a) unless it thinks that they 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.
- 4.14 Compulsory purchase orders must only be made if the Council is satisfied that there is a compelling 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.”

For the reasons set out in this report, it is considered that there is such a compelling case for properties within Phases 1 and 2 of the proposed regeneration programme and that the public interest requires that the order be made in order to carry through the necessary redevelopment of the CPO Land.

- 4.15 Further, in making the order 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):

“22. 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...

Members will note that there will be sufficient funds available to meet the compensation costs for the acquisition of the land as South Kilburn Partnership has approval from Government Office for London. Officers consider that there is a reasonable prospect of the Scheme going ahead subject to HCA funding being obtained. 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.

4.16 It is necessary to consider the human rights implications of making CPOs. The Convention Rights applicable to the making of any CPO orders are Articles, 6 and 8 and Articles 1 of the First Protocol. The position is summarised in para. 17 of Part 1 of the Memorandum to ODPM Circular 06/04.

4.17 Article 6 provides that:

“In determining his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”

4.18 Consultation has already taken place with communities that will be affected by any orders made, and further consultation is proposed as set out in this report.

4.19 All those affected by the Orders will be informed and will have the right to make representations to the Secretary of State and to be heard at a Public Inquiry. Those directly affected by the Order will also be entitled to compensation for any losses that they may incur as a result of the acquisition.

4.20 Article 1 of the First Protocol states that:

“Every natural or legal person is entitled to peaceful enjoyment of his possessions” and “(n)o one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law....”

4.21 Whilst occupiers and owners will be deprived of their property if an Order is confirmed, this will be done in accordance with the law. It is being done in the public interest as required by Article 1 of the First Protocol. The reasons for this are set out in this Report.

4.22 Members need to ensure that there is a reasonable prospect of the Scheme

underpinning the CPO proceeding. This is addressed in paragraph 12.10 below

- 4.23 The consequences of abandoning a confirmed CPO depends on:
- (a) whether a notice to treat or entry has been served on the owner of the land or not; and
 - (b) whether the Council has entered the land following the service of the notice or made a General Vesting Declaration in respect of the land.
- 4.24 The passing of a resolution to make a CPO does not trigger the right to serve a blight notice. However, residential occupiers could claim blight after a CPO has been submitted to the Secretary of State for confirmation and notices have been served on owners and occupiers.
- 4.25 If the CPO is not acted upon at all, then no compensation is payable. Where notice to treat and entry have been served, and then not acted upon, the Council is under an obligation to inform the owner of the withdrawal of the notices or expiry as the case may be (as notice to treat has a life span of three years from date of service) and will be liable to pay compensation to the owner for all losses and expenses occasioned to him by the giving of the notice and its ceasing to have effect. The amount of compensation shall in default of agreement be assessed by the Lands Tribunal. Interest is payable on the compensation.
- 4.26 The acquisition procedure is governed by the Acquisition of Land Act 1981, the Compulsory Purchase of Land Regulations 2004 and the Compulsory Purchase of Land (Vesting Declarations) Regulations 1990.
- 4.27 The CPO must be advertised locally and copies served on any owners, lessees, tenants (whatever the tenancy period), occupiers, all persons interested in, or having power to sell and convey or release, the land subject to the CPO. In addition the CPO must be served on persons whose land is not acquired under the CPO but nevertheless may have a claim for injurious affection under Section 10 of the Compulsory Purchase Act 1965, such as owners of rights of access to and from the public highway, easements and covenants that are affected by the CPO. Officers will prepare a detailed Statement of Reasons setting out the justification for compulsory acquisition. This statement will cover all the issues set out in this Report.
- 4.28 If any duly made objections are not withdrawn, the Secretary of State must hold an Inquiry and consider the conclusions and recommendations of the Inspector before confirming the Order.
- 4.29 Before and during the compulsory acquisition process, the Council is expected to continue the process of seeking to acquire the properties sought by negotiation and private agreement: see Part 1 of the Memorandum to Circular 06/04 Paras. 24 and 25. Para. 25 notes that “undertaking informal negotiations in parallel with making preparations for a compulsory purchase

order can help to build up a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect...”.

- 4.30 Any dispute as to the amount of compensation to be paid is referred to the Lands Tribunal for determination.

Ground 10A

- 4.31 The Council is required to obtain the approval from the Secretary of State when seeking to re-housing secure tenants who will not leave the properties that are due to be demolished. Before seeking approval the Council is required to consult with tenants. Approval will enable the Council to use Ground 10A of Schedule 2 to the Housing Act 1985 to obtain possession of the dwellings let under secure tenancies and provide the tenants with suitable alternative accommodation.

5.0 Financial Implications

- 5.1 The resource envelope for taking forward the South Kilburn regeneration programme in 2010/11 is determined by the level of the capital receipts to be secured for the disposals (by way of the 999 year lease) of the Albert Road site and the Carlton Vale roundabout site to L&Q. The Council expects to receive the receipt for Albert Road in June 2010 whilst the timing of the receipt for Carlton Vale roundabout site is dependent on satisfying all conditions precedent, including completing the highways stopping up order and subsequently the enabling works. The earliest this is likely to be achieved at the end of 2010 to 2011.
- 5.2 In effect the financial model for South Kilburn is for the regeneration scheme to ‘wash its face’ 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 & Communities Agency, and is a condition of their grant funding for both the Albert Road and the Carlton Vale roundabout sites. A consequence of this approach is that the Council makes a saving on the previous £1m per annum expenditure identified within the capital budget for South Kilburn.
- 5.3 Other sources of income for the South Kilburn programme over the course of the year include New Deal for Communities funding, funding from the South Kilburn Neighbourhood Trust (including the Council’s share of the receipt from the sale of the Texaco site), and growth area funding.
- 5.4 The key expenditure items for the year will be:
- Leaseholder buy backs – a full paper will be prepared in collaboration with the Director of Finance and Corporate Resources setting out proposals for

prudential borrowing arrangements to facilitate the early buy backs of leaseholder properties. This will be through an Invest to Save approach whereby this enabling expenditure will allow capital receipts to be generated which will be utilised to repay the debt and end interest incurred.

- Design fees – it is proposed to appoint three design teams from the Homes & Communities Agency consultants' panel to bring forward design work for the three sites (Cambridge & Wells, Ely, and Bond & Hicks Bolton). All initial contracts will be for less than the £500,000 threshold for Executive approval and both will be resourced from the resource envelope outlined above. Depending on end sales values it should be possible to recoup these costs when the sites are ultimately disposed.
- Strategic acquisition of property – there are a number of opportunities within South Kilburn for the Council to acquire property that will be required to bring forward both the next and future phases of the scheme. Individual acquisitions will need to be approved by Executive in the usual way throughout the year.
- Repayment of £2.5m of resources expended by the New Deal for Communities grant during the period since 2009 and used for leaseholder buybacks, to the South Kilburn Neighbourhood Trust. This is a condition imposed by government on the NDC expenditure and is designed to ensure the resources are recycled back into South Kilburn. Officers are currently working with the Trust Board to prepare an ongoing capital strategy for the Trust to ensure that the resources make a positive contribution to the programme.

5.5 The key challenge for the programme is to ensure that the cashflow remains positive, or within acceptable tolerances. New project management arrangements are being introduced to ensure that officers are equipped to manage the cashflow, and that there are clear lines of responsibility and accountability for doing so.

5.6 Clearly the key funding risk for the regeneration programme is the ongoing level of grant funding that can be secured from the government (through the Homes & Communities Agency) to support future development sites in South Kilburn. The Council is well advanced with its 'single conversation' discussions with the HCA, and South Kilburn is identified as a key priority within the Local Investment Framework that both the Council and the HCA will ultimately sign up to. The HCA are supportive of the Council's overall approach to regeneration in South Kilburn, and its specific delivery strategy of incremental development, supported by a recycling of capital receipts.

5.7 Nevertheless in the current economic and political climate it would be prudent to assume that there will be less grant funding available for access by the Council in the immediate short term. South Kilburn is fortunate in that it is located in an area of high potential land value. With the Council firmly in control of the regeneration process, it would be possible at a future date to

dispose of sites identified for predominantly private housing on the open market, thus generating a receipt to cover expenditure and potentially maintain the regeneration momentum. Experience from the initial sites has demonstrated the additional value that can be secured for sites if they are de-risked – ie. with planning permission secured and with vacant possession.

5.8 Based on the sales values secured for Albert Road and Carlton Vale sites, it is estimated that the three remaining Phase 1 sites to be taken forward in 2010/11 could realise capital receipts of up to £12million. Officers remain confident that the overall phasing strategy will ultimately deliver a significant final capital receipt.

5.9 Appendix 3 sets out a draft headline income and expenditure budget for the South Kilburn regeneration project for the coming two years. Expenditure against this budget will only begin to be defrayed once the capital receipt for the Albert Road residential site is received.

6.0 Diversity Implications

6.1 South Kilburn is a designated New Deal for Communities area and as such all interventions are specifically targeted at those people who suffer disadvantage in society. South Kilburn Partnership has a Race & Equality strategy, and through its widening participation theme 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.

6.2 At a project level, each South Kilburn Partnership sponsored and supported project is subject to a full and independent appraisal undertaken by a panel of local residents and relevant officers. Part of the appraisal process is to test each activity against the Partnership's Race & Equality strategy to ensure full compliance. In line with the Council's Equality standards, all expenditure is monitored against equalities indicators on a regular basis.

7.0 Staffing / Accommodation Implications

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

APPENDICES

Appendix 1: Draft allocations policy for South Kilburn

Appendix 2: Proposed CPO land

(This appendix is not for publication as it contains the following category of exempt information as specified in paragraph 3, schedule 12(A) of the Local Government Act 1972 namely "information relating to the financial or business affairs of any

particular person (including the Authority holding the information).

Appendix 3: Draft Income & Expenditure Profile for Phase 1

(This appendix is not for publication as it contains the following category of exempt information as specified in paragraph 3, schedule 12(A) of the Local Government Act 1972 namely “information relating to the financial or business affairs of any particular person (including the Authority holding the information).

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