



## Cabinet

25 July 2016

### Report from the Strategic Director of Regeneration and Environment

For Action

Wards affected:  
Kilburn

### **South Kilburn Regeneration Programme – Site 18 encompassing Salusbury Road Car Park, Cullen House and adjoining land**

#### **1 Summary**

- 1.1 This report sets out the approvals required by the Cabinet to further progress this project originally within Phase 2b of the regeneration programme.
- 1.2 This report sets out proposals for Salusbury Road Car Park, Cullen House and adjoining land comprising of the spur road, Keniston Press, TfL offices at Premier House and the Falcon Public House (together defined as "**Site 18**"), which forms part of **Phase 2b** of the South Kilburn regeneration programme and as shown edged red on Plan A at Appendix 1. This development has been stalled since 2012 due to safeguarding of the site by High Speed Two Ltd (HS2) for a proposed ventilation shaft and auto transformer. The Council has recently successfully secured the release of this site from HS2.

#### **2 Recommendations**

##### ***Phase 2b - Site 18***

- 2.1 That the Cabinet confirm consent to restart the proposed redevelopment of Site 18 and confirm that the recommendations made in July 2011, can be relied upon by officers to secure possession of Site 18 and where relevant, following the completion of the statutory consultation exercises as set out below;
- 2.2 i) authorise the Strategic Director of Regeneration & Environment to seek the Secretary of State's Consent to the disposal and development of Cullen House 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, Section 32 Housing Act 1985 to dispose of housing land, Section 19 Housing Act 1985 for appropriation of land for planning purposes and under the necessary Act (if applicable) to dispose of non-housing land;

ii) make a compulsory purchase order to acquire all interests and rights in Site 18 and any new rights in Site 18 which may be required under section 13 of the Local Government (Miscellaneous Provisions) Act 1976; and

iii) authorise the submission of 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 and Corporate Resources. The full extract from the 2011 decision is set out in Appendix 2.

2.3 That the Cabinet authorise and delegate authority to the Operational Director of Regeneration to commence statutory consultation with the secure tenants residing in Cullen House on the following three matters: (i) statutory consultation in connection with seeking approval of the Secretary of State for use of Ground 10A of Schedule 2 to the Housing Act 1985; (ii) consultation on the Council's proposal to make a CPO on properties in Cullen House that are currently occupied by secure tenants; and (iii) consultation in connection with the draft allocation policy for allocating homes to secure tenants living within Cullen House. Following statutory consultation the draft Allocation Policy, will be brought back to the Cabinet for approval.

### **3 Detail**

#### ***Phase 2b - Site 18***

3.1 In July 2011, the Council's Executive/Cabinet approved the detailed recommendations set at paragraph 2.2 above.

3.2 As per recommendation 2.14 of the July 2011 cabinet report, demolition notices were served to secure tenants of Cullen House on the 14 September 2012.

3.3 The redevelopment of Site 18 has been delayed as a result of the site being affected by HS2's proposal to locate a vent shaft and Auto-Transformer station (ATS) and tunnel route relating to the construction of Phase One of HS2 on and beneath the site. Recently, following discussions and a Brent Council petition to Government, HS2 has submitted to Parliament, a revision to the original bill known as AP4. This AP4, which has been accepted by Parliament consents to the relocation of the vent shaft and ATS to another site which does not form part of the South Kilburn Regeneration Programme. As a result, the Council is now free to bring forward Site 18 for redevelopment in accordance with the Masterplan and the planning permission granted on 9 November 2012.

3.4 Given the passage of time and to avoid any potential challenge to the implementation of the above powers, it is thought prudent and legally advisable that the decisions taken in July 2011 be re-confirmed. As a result, as set out in recommendations 2.2 and 2.3 above, Officers are seeking Member confirmation that those decisions in respect of Site 18 can be implemented and where relevant following the consultation detailed at paragraph 3.5 below.

3.5 Officers also seek authority permitting the Operational Director of Regeneration to commence statutory consultation with secure tenants residing in Cullen House on three proposals, namely: (i) statutory consultation in connection with seeking approval of the Secretary of State for use of Ground 10A of Schedule 2 to the Housing Act 1985 (ii) consultation on the Council's proposal to make a CPO on properties in Cullen House

that are currently occupied by secure tenants (iii) consultation in connection with a draft allocation policy for allocating homes to secure tenants living within Cullen House.

- 3.6 On the 31 May 2016 the Council completed on the purchase of, Times House, 50 Claremont Road, London W9 3DZ, which was the (Genesis owned Keniston Press site), which forms part of the planning approved site. Cabinet approval was granted on 16 January 2016 for this acquisition, please see Appendix 3 for further background detail in regards to this acquisition of the Keniston Press site.
- 3.7 As a result of the Site 18 being brought forward for redevelopment, there will need to be closure to Spur Road. This will be dealt with by the Councils highways team in due course.

### **Financial Implications**

- 3.8 The financial model for the South Kilburn regeneration programme is to be self financing within the funding envelope generated from on-going disposals, which are ring-fenced so all the capital receipts generated are reinvested back into the South Kilburn regeneration programme, to enable the rolling regeneration programme to continue to deliver much needed new homes.
- 3.9 All costs to produce consultation documents will be covered within existing Revenue budgets.

## **4 Legal Implications**

### **Ground 10a of Schedule 2 to the Housing Act 1985**

- 4.1 The Council is required to obtain the approval of the redevelopment scheme from the Secretary when seeking to re-house 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 from the Secretary of State will enable to 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.
- 4.2 Unlike a tenanted transfer, however, no formal ballot will 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.
- 4.3 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.

### **Compulsory Purchase Orders**

- 4.4 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 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. 4.10 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.”

- 4.5 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. 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”*
- 4.6 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.”* 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.

#### **Appropriation of land for planning purposes**

- 4.7 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.
- 4.8 Appropriation is subject to third party rights over the land and in respect of the South Kilburn Estate as it is housing land the prior consent of the Secretary of State under Section 19 of the Housing Act 1985, if the appropriation includes land on which dwellings have been built or land over which owners or occupiers of dwellings have rights.
- 4.9 Section 237 of the Town and Country Planning Act 1990 provides where land has been appropriated for planning purposes any easements such as rights of way which may exist for the benefit of third parties are overridden on erection, construction or carrying out of maintenance of any building and change of use in accordance with planning permission, subject to payment of any compensation. The practical effect is that any

rights which may exist do not delay or obstruct the development. This provides effective assurance to the developer that he will have a good title to the land.

- 4.10 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.

## **5 Diversity Implications**

- 5.1 South Kilburn was identified as a priority area for driving economic opportunity and regeneration within Brent – Creating Opportunities, Improving Lives (Brent Borough Plan 2013-14). The Regeneration Strategy for Brent 2010-2030 identifies the transformational change of South Kilburn within strategic priority one. The area was previously a New Deal for Communities area and as such, all interventions are specifically targeted at those people who suffer social economics disadvantage. South Kilburn Trust, through its widening participation, seek to find ways of involving and engaging with all local residents and particularly those who traditionally are 'hard to reach'. There has been and will continue to be widespread resident consultation and community engagement as proposals for the physical regeneration of the area are developed and delivered
- 5.2 The new homes in South Kilburn are available to all secure tenants currently living in properties due for demolition as part of the South Kilburn regeneration programme within the neighbourhood regardless of their ethnicity, age, gender, marital status/civil partnership, sexual orientation, disability, gender identity or expression or religion or belief. A proportion of new homes are designed to be wheelchair adaptable while the allocations process considers the housing needs of secure tenants in respect of issues that maybe derived from individuals' age, disability, gender reassignment, pregnancy and maternity status, marriage and civil partnership status, race, religion or belief, sex, sexual orientation, ethnicity. Following the upcoming Needs Assessments carried out by the Estate Regeneration Housing Team the equalities actions will be reviewed and analysed at that time.

## **6 Staffing/Accommodation Implications**

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

## **7 Background Papers**

Appendix 1	Plan A - Site 18
Appendix 2	Report to the Executive/Decisions 18 July 2011
Appendix 3	Report to the Cabinet/Decisions 16 January 2016

## **8 Contact Officers**

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