



**Executive**  
18 July 2011

## **Report from the Director of Regeneration and Major Projects**

Wards Affected:  
Kilburn, Queen's Park

### **South Kilburn regeneration progress update**

#### **1.0 Summary**

1.1 This report summarises the progress made on the regeneration of South Kilburn, and sets out four main processes for approval by the Executive for continuing the momentum established by the Council over the past two years for the regeneration of the South Kilburn area. It seeks approval to:

- (a) Progress with the procurement of a developer partner via a mini competition under the South Kilburn Developer Framework for phase 1b (Cambridge, Wells and Ely Courts, Bond and Hicks-Bolton Houses) and agree rent levels for the purposes of the tender documents;
- (b) Progress with Phase 2 of the South Kilburn Regeneration programme, including the redevelopment of the Queens Park Station Area (Site 18) and any relevant acquisition of land and all relevant legal procedures;
- (c) Progress with the redevelopment of the Argo Business Centre, Post Office and 4-26 Stuart Road including any relevant acquisition of land as part of the redevelopment proposals and all relevant legal procedures;
- (d) Progress with pursuing options for the redevelopment of the current Albert Road Daycare Centre site and British Legion (Site 11A) including any relevant acquisition of land and all relevant legal procedures;
- (e) Progress with appointing architects for the detailed design of Bronte and Fielding House and Site 18;
- (f) Proceed with the procurement of a decentralised energy supplier within South Kilburn.

#### **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 agree to progress with Phase 2 of the regeneration proposals in line with the overall phasing strategy, including the redevelopment of Bronte and Fielding Houses, the Queens Park Station area (Zone 18) and 4-26 Stuart Road.
- 2.3 That the Executive authorise Officers to take preparatory steps with a view to procuring an EU compliant contract with a prospective energy suppliers to bring forward a decentralised energy solution for South Kilburn.
- 2.4 That the Executive note the appointment of Alison Brooks Architects from the LDA Architecture, Landscape and Urban Design Framework Agreement to lead the design team through to full planning application (RIBA Stage C or D) for the Bronte and Fielding site.
- 2.5 That the Executive note the appointment of Maccreanor Lavington Architects from the LDA Architecture, Landscape and Urban Design Framework Agreement to lead the design team through to full planning application (RIBA Stage C or D) for the Queens Park Station Area (Zone 18).
- 2.6 That the Executive agree to set rent levels for the affordable units within Phase 1b sites, including Wells Court, Cambridge Court, Ely Court, Bond House and Hicks Bolton House once completed, at a rent equivalent to Homes and Community Agencies Target Rent Levels and to adopt this rent level for other affordable development in South Kilburn until borough wide rent levels are reviewed later in the year.
- 2.7 That the Executive note the Director of Regeneration and Major Projects intention to undertake a mini-competition under the South Kilburn Developer Framework to identify a developer partner for the disposal of Phase 1b sites, including Wells Court, Cambridge Court, Ely Court, Bond House and Hicks Bolton House.
- 2.8 That the Executive authorise the Director of Regeneration and Major Projects to seek the Secretary of State's consent to the disposal and redevelopment of phase 2 sites including Cullen House, Site 11B and 4-26 Stuart Road 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, Section 32 of the Housing Act 1985 to dispose of housing land, Section 19 of the Housing Act for appropriation of land for planning purposes and under the necessary Act (if applicable) to dispose of non housing land.
- 2.9 That the Executive authorise the making of compulsory purchase orders (CPOs) to acquire (a) all interests and rights in the properties listed in Appendix 1 and comprising the land shown edged red on the plans in Appendix 1 (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, notably the Argo Business Centre, Post Office and 4-26 Stuart Road, Site 18 comprising the Queen's Park Station Area and Site 11B comprising the Albert Road Daycare Centre (ARDC) and the British Legion.

- 2.10 That the Executive authorise the Director of Regeneration and Major Projects to stop long term lettings on Cullen House and 4-26 Stuart Road and continue to prioritise all new development site lettings in South Kilburn to tenants within sites on the next phase of development.
- 2.11 That the Executive note the Director of Regeneration and Major Projects' intention to undertake a mini-competition under the South Kilburn Developer Framework to identify a developer partner for the disposal of the 4-26 Stuart Road site and to secure any other affordable housing on the Argo and Post Office sites for that partner in pursuit of decant units for South Kilburn;
- 2.12 That the Executive note the Director of Regeneration and Major Projects' intention to take steps to secure the Albert Road site (11B) for disposal on the open market.
- 2.13 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.
- 2.14 That the Executive authorise the service of demolition notices and the suspension of tenants' Rights to Buy in relation to secure tenancies at 4-26 Stuart Road and Cullen House, which are all on the South Kilburn estate, and authorise the Director of Regeneration and Major Projects to issue all and any notices required to be issued in connection with such demolition.
- 2.15 That the Executive authorise the:
  - 2.15.1 Director of Regeneration and Major Projects 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;
  - 2.15.2 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;
  - 2.15.3 Service of all requisite notices on the holders of the CPO Land relating to the making and confirmation of the CPOs
  - 2.15.4 Director of Regeneration and Major Projects 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);

2.15.5 Director of Regeneration and Major Projects 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;

2.15.6 Director of Regeneration and Major Projects, 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.

### **3.0 Detail**

#### *Regeneration progress to date*

3.1 In March 2011, the land receipt for zone 3c (former Carlton Vale Roundabout), has now been obtained and the site secured by London and Quadrant who have now started on site. The income from the land receipts for both 11a and 3c have been recycled back into the delivery of the remaining phase 1b sites and future phases, therefore sustaining the momentum of the regeneration. A pipeline of “planning approved” development sites will significantly assist the delivery of the regeneration programme as well as fulfilling new housing requirements for existing South Kilburn tenants. It is currently estimated that phase 1a sites will be ready for occupation between Autumn 2011 and Winter 2012, with Gordon House programmed for completion in September 2011; the Texaco Garage site and Marshall House, Albert Road site (zone 11a) completed April 2012 and the roundabout site (zone 3c) by December 2012.

3.2 On 22<sup>nd</sup> March 2011 and 12<sup>th</sup> May 2011 respectively, the planning applications for Cambridge, Ely and Wells Court and Bond and Hicks Bolton House were approved and the Compulsory Purchase Order submitted to the Secretary of State. The phase 1b developments will provide 86 market housing units and 122 affordable housing units, with the affordable housing units available for decant for phase 2 decants. Officers are now in a position to begin preparing tender documents for a mini competition for the qualifying developer partners under the existing South Kilburn Developer Framework, which are scheduled to be sent out at the end of June 2011.

3.3 The forecast costs associated with progression of these works are included within the table at paragraph 5.3 of this report within the Financial Implications.

#### *Target Rent Requirements*

- 3.4. The Executive are asked to consider raising rents on the next phase of developments to the equivalent of Housing Association Target Rents as a way of affording the redevelopment proposals, without having to jump to new rent regimes proposed by the HCA – see below and the accompanying paper setting out the proposed changes in the funding of affordable housing.
- 3.5 The original 2005 proposal to South Kilburn tenants moving from a demolished into a new block is that their rent would be based on existing South Kilburn rents uprated slightly to reflect that fact that they had a new property. The council could make this offer because it received Homes and Communities Agency grant (or equivalent estate regeneration subsidy) equivalent to around £100k per unit. At the same time schemes such as Gordon House which were not part of the original ‘estate development’ were built by housing associations, funded by the HCA and a condition of grant was to charge housing association Target Rent, broadly about £15 a week higher than council rents. On the phase 1 sites now being built, the council agreed that tenants would move in at South Kilburn council rent plus a 10% uplift and then converge to Target Rent. In February 2011, a new central government funding regime for affordable housing was introduced. The HCA’s new grant regime relies on much lower levels of grant and much higher levels of rent, known as ‘Affordable Rent’ model and these are set at 80% of rents in the Open Market. The differences are set out in the table below but they generally more than double target Rent (many but not all rent increases will be met by Housing Benefit subject to a cap). The HCA recognise the problems in this approach in estate redevelopment. Clearly we are not able to get existing tenants to agree to a doubling or tripling of rent, but as yet the HCA has not proposed any financial regime that may help us develop within a reasonable rent regime and secure HCA funding.

Unit size	Current SK ‘council’rents per week (average for comparison)	Housing Association Target rents per week	The new ‘Affordable Rent’ 80% market rent per week
1 bed	£80	£96.94	£200
2 bed	£88.45	£103.23	£250-£260
3 bed	£97.34	£109.53	£300-£325
4 bed	£106.09	£115.83	£450

- 3.6 Officers have sought advice from Navigant consultants to look at whether the council could continue to fund the redevelopment of south Kilburn, what level of rent is required and whether it could be achieved without the grant that triggers huge rent increases. The regeneration programme, re-providing 1200 council homes, based on Target Rents, and without HCA grant will produce a small surplus of £7.3m over the lifetime of the 15-20 year project. This analysis assumes a best case approach: that relatively high sales values and targets are met by housing associations in selling private homes to achieve the cross subsidy. However if current council rents are charged the scheme would receive about £12m less, making a loss of almost £5m.

- 3.7 In conclusion, setting Target Rents on the next and subsequent phases is the only realistic way of affording the whole scheme while not requiring large amounts of grant that would hike rents to the new 'Affordable Rent' levels. Moreover council rents are set to converge with Target Rents in the next few years in any case (inflation levels are likely to determine the pace of this convergence but the prediction is between 2014-2016).

*Phase 2 - Progression of sites to detailed planning application*

- 3.8 The Executive in March 2011 noted Officers' intention to select a design team from the LDA Architecture, Landscape and Urban Design Framework Agreement (LDA Framework) to progress with a detailed design for Bronte and Fielding House (Zones 3a and 3b) up to RIBA Stage C or D. Officers subsequently conducted a mini-competition under the LDA Framework and tenders were submitted and evaluated in early May and scored 30% on price and 70% on quality. The qualitative criteria considered how the submission performed in respect of:

- The council's submission for South Kilburn
- The characteristics for the specific sites, including opportunities and constraints
- Relevant experience
- Resources and the strength of the design team
- Ability to meet the council's requirements in terms of delivery
- Ability to meet the council's requirements in respect of public consultation.

Alison Brooks Architects tendered a price of £452,231. When this was combined with the qualitative aspects of the tender evaluation, Alison Brooks Architects achieved the highest score of 155 marks out of 170. As this is classed as a Medium Value contract, Officers will award a contract to Alison Brooks Architects using delegated powers to progress the detailed design work to RIBA Stage D and a planning application in early 2012. The final scores are available at Appendix 2.

- 3.9 A mini competition under the LDA Framework has also been conducted in relation to the Queens Park Station Area site (Site 18). The mini-competition was conducted on the same basis as above for the Bronte and Fielding House site using the same evaluation criteria and weightings. Submissions that achieved a combined score of 65 marks out of 100 were interviewed. Interviews were also scored using the same criteria. The tender submission that achieved the highest combined score (submission appraisal and interview appraisal together with price) were selected. Maccreanor Lavington Architects tendered a price of £449,950 and when this was combined with their qualitative scores, resulted in the firm achieving the highest combined score of 138.4 marks out of 170. As this is classed as a Medium Value contract, Officers will award a contract to Maccreanor Lavington Architects using delegated powers to progress the detailed design work leading to a planning application in early 2012. The final scores are available at Appendix

2. A Planning Brief was adopted for the site in 2007 and any new design will be in accordance with that brief.

- 3.10 Site 18 is currently owned by four separate parties; Transport for London, Greene King Brewery, Genesis Housing Association and the council. Genesis Housing Association is currently undertaking detailed design work for its own site but the council has asked them to consider proposals to comprehensively redevelop the whole site. Officers recommend that permission for the use of Compulsory Purchase Order should be given to ensure that the site is developed as a whole but officers are hopeful that any development will be supported by all parties. The Executive may be aware that there are draft proposals to locate a 130m<sup>2</sup> air shaft on the south-west corner of the site to service the proposed High Speed 2 (HS2) tunnel that would be built deep under this site. The council is considering its response to HS2 and will respond to the consultation in due course. Since the HS2 proposals are in draft, are much longer term and are by no means certain, Officers recommend that the council make representations about the location of the vent shaft and continue with its long held proposals to redevelop the site to regenerate the area.
- 3.11 The costs of the recommended architectural practices can be met from within the overall forecast costs for these site areas, as laid down in the table at paragraph 5.3 of this report.

*The Argo Business Centre, former Post Office and 4-26 Stuart Road*

- 3.12 The Argo Business Centre and former Post Office sites are located on Kilburn Park Road to the south of the South Kilburn regeneration area. The council has been approached separately by the owners of each of the sites for pre-planning application submission discussions. The Argo and Post Office sites sandwich the 4-26 Stuart Road block. While 4-26 Stuart Road was going to come forward as a much later phase of the South Kilburn development the proposals on either side allow a comprehensive approach to be taken to bring forward a coherent development. This provides an opportunity for the council to replace some existing affordable housing and provide some net gains to assist with the regeneration programme without having to use significant up-front funding of its own. It is proposed to add the site on to either of the Argo or Post Office developments and preferably both. A phased development would also allow the opportunity to decant these units into another part of the site.
- 3.13 Executive authority is sought to include 4-26 Stuart Road in the current phase of development, and to secure the necessary ground 10a and CPO approvals to allow the council to secure possession of the site. It is proposed that any new permanent lettings on the site are stopped and that existing tenants be given priority for decant to appropriate phases of development. In order to secure best value for the site it is proposed that a mini-competition is held under the South Kilburn Developer Framework to ensure the development potential and value of the site is realised with the affordable dwellings in the

development area as shown in Appendix 1 secured. There are no financial implications as yet for this project as it is expected that planning application costs will be covered by the developer. Executive authority will be sought for appointment of any developer identified under the South Kilburn Developer Framework given that their appointment is likely to be a High Value Contract under the Council's Contract Standing Orders and Financial Regulations.

*Redevelopment options – The Albert Road Daycare Centre and British Legion (Zone 11B)*

- 3.14 Site 11B encompasses the Albert Road Day Care Centre (ARDC) and the British Legion. The ARDC is currently being replaced on the John Billam site in Kenton. The ARDC will then be vacant in the summer of 2012 and represents an opportunity to bring forward a relatively unencumbered site, and a plan is needed to secure the vacant site and develop options focusing on its longer term development.
- 3.15 The site is earmarked for mostly private residential development within the South Kilburn Masterplan. The council has the option to bring forward designs such as on Site 18 but the current resources only allow a limited number of sites to be fully worked up in detail. Therefore it is proposed to offer the site for residential development on the open market in order to secure best value. The council will ensure that a small proportion of affordable housing is delivered for decant and that the quality of the development is ensured through the procurement and planning process. The timing of sale and development will be controlled by the council so as not to bring too many for sale units onto the market. Note that Site 18 is adjacent to Site 11B and has a high proportion of sale units. Site 11B does however offer a prospect of quicker development because it is less complicated than Site 18 and this gives the council some flexibility in ensuring a development pipeline to fund the affordable units we need to deliver.
- 3.16 The forecast costs associated with progression of these works are included within the table at paragraph 5.3 of this report within the Financial Implications.

*Procurement of a decentralised energy supplier*

- 3.17 As part of the regeneration of South Kilburn, the installation of a district heat network has always been considered. A district heat network will enable new developments in South Kilburn to achieve Code for Sustainable Homes Level 4 and provide energy service to users at a lower cost (normally 10% lower than the market price). All the approved new developments are required by planning Section 106 to connect to the district heat network. Alternative measures need to be installed if the network fails to come forward. It is proposed that hot water is pumped from an energy centre. The pipe carries this heated water past each building which is fitted with a heat exchanger that allows taking the heat from the network. For South Kilburn, it is proposed that heat will be generated by a district-wide combined heat and power (CHP) plant which generates electricity whilst also capturing usable heat that is



produced in this process. To meet heating demand in winter, centralised boilers will be installed in the energy centre. Each property drawing heat from the heat pipe is metered for heat consumption (for hot water and central heating) and will pay for this heat accordingly. An energy supply company (ESCo) is formed to deal with billing and collection of payments for heat supply and to install, maintain and manage the boiler system and heat network. ESCos can be community owned and run or can be a service provided by an outside company, sometimes a gas supplier.

- 3.18 An ESCo feasibility study for South Kilburn was undertaken by E.ON to see if the project could be viable and feasible. The conclusion is that the contract would be attractive to an ESCo. The contract is likely to be 25-40 years because of long build out period and risks associated with delays. The study also indicates £15.2m of capital expenditure (Capex) required. The level of financial contribution of an ESCo reflects the project risks such as Capex risk, operational management risk, plant replacement costs, customer credit risk, supply risk etc. An ESCo will contribute a proportion of Capex while the rest will be contributed by the developers who are required to connect to the network.
- 3.19 There have been many examples of district or estate wide energy systems that have proven unreliable, inefficient or too expensive. The new systems are considered to be much more efficient, they have the potential to provide cheaper energy to consumers and are as cheap to install as the package of measures otherwise required to get the Code for Sustainable Homes level 4. They are also better future proofed against further changes in code levels that will be required in coming years. The Mayor of London favours this decentralised energy approach and will seek its provision when applications in South Kilburn are referred to him (as he did on Wembley with the NW lands application). Officers therefore recommend that the issue is explored further.
- 3.20 Officers wish to take preparatory steps with a view to procuring a contract with a prospective energy supplier to bring forward a decentralised energy solution for South Kilburn. Officers propose to alert the potential bidders by issuing the Prior Information Notice (PIN) in June/July 2011 in OJEU. If a positive response is received from the market, Officers will seek Executive authority to invite tenders and approve the pre-tender considerations and the criteria to be used to evaluate tenders before the contract notice is published in autumn 2011. The council is not committing to an energy centre at this stage but is testing the market to see if the costs of provision and the energy benefits make it worthwhile to do so.

#### **4.0 Legal Implications**

- 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.

*Tender submission assumptions - target rent*

- 4.2 No significant implications are expected - the approach to setting Target Rents follows a precedent within other regeneration areas in the borough.

*Procurement of developer partners for the 4-26 Stuart Road Site and the Argo and Post office Sites and for Phase 1b sites including Wells Court, Cambridge Court, Ely Court, Bond House and Hicks Bolton House*

- 4.3 As a result of recent rulings in the European Court of Justice, if the Council utilise a development agreement 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 ECJ 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.
- 4.4 The intention is to identify developer partners using mini-competitions under the South Kilburn Developer Framework for both Phase 1b sites and also for the 4-26 Stuart Road Site and the Argo and Post office Sites. The South Kilburn Developer Framework is a framework established by Brent Council in accordance with the Public Contracts Regulations 2006 (the EU Regulations) and on advice from Trowers & Hamblins, the Council's legal advisors on this project. 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 developer partners is considered to satisfy the requirements of recent rulings in the European Court of Justice as detailed in paragraph 4.3.
- 4.5 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.
- 4.6 The award of the 2 development agreements 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 both contract with developer partners is likely to be such that they are classed as High

Value contracts). As a result, once developers have been identified following mini-competitions under the South Kilburn Developer Framework, Executive approval to award both development agreements will be required.

*Appointment of design teams for the Bronte and Fielding Site and the Queens Park Station Area (Site 18)*

- 4.7 As detailed at paragraphs 3.8 and 3.9, mini competitions under the LDA Framework have been conducted in relation to both the Bronte and Fielding Sites and the Queens Park Station Area site (Site 18). As the LDA Framework has been established pursuant to EU Regulations, 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.
- 4.8 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 the call off under the framework agreement is recommended by the relevant Chief Officer who has confirmed that there is budgetary provision for the proposed call-off and provided that the Director of Legal and Procurement has advised that participation in the framework agreement is legally permissible. It is confirmed at paragraph 3.11 that the cost of call off contracts can be met from within the overall budget forecast for the site areas. Further, the Director of Legal and Procurement has advised that the use of the LDA Framework or the proposed call-offs is legally permissible. As the proposed contracts are Medium Value Contracts under the councils Contract Standing Orders and Financial Regulations, Officers have delegated powers to award such contracts.

*Compulsory Purchase Orders*

- 4.9 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.”*

4.11 For the reasons set out in this report and the report to the Executive Committee meetings on 23rd June 2010 and 15<sup>th</sup> November 2010, it is considered that there is such a compelling case for properties within Phase 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.

4.12 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):

*“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.”*

4.13 Executive will note that there will be sufficient funds available to meet the compensation costs for the acquisition of the land as South Kilburn Neighbourhood Trust has approval from Government Office for London (now the Department for Communities and Local Government), as well as funds secured from previous land receipts. 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 for the CPO for Argo Business Centre, Post Office and 4-26 Stuart Road, Site 18 and Site 11B.

4.14 It is necessary to consider the human rights implications of making CPOs. This information is covered in the 15<sup>th</sup> November 2010 Report to Committee.

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

4.15 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.

- 4.16 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.
- 4.17 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.
- 4.18 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.

#### *Withdrawal of Right to Buy / Demolition Notices*

- 4.19 Initial Demolition Notices need to be served on secure tenants in accordance with the provisions of Section 138A and Schedule 5A of the Housing Act 1985 as amended by the Housing Act 2004 to prevent the Council from having to complete right to buy sales. Schedule 5A sets out what must be included in the Initial Demolition Notice, including the intention to demolish, the reasons for demolition and identifying the period within which the landlord intends to demolish. The period set out in the notice to carry out the demolition works must be more than reasonable to carry out the proposed demolition of the relevant properties or in any case not expire more than five years after the date of service of the notice.

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

- 4.20 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.
- 4.21 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.
- 4.22 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*

- 4.23 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.
- 4.24 The Prudential Capital Finance System, which was introduced in 1st April 2004, under regulation 12(1) 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. 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.

*Procurement of a decentralised energy contract*

- 4.25 As indicated in paragraph 3.20, Officers wish to take preparatory steps in market testing with a view to procuring a framework of prospective energy suppliers to bring forward a decentralised energy solution for South Kilburn
- 4.26 Officers wish to issue a Prior Information Notice (PIN) in June/July 2011 in OJEU. Publication of a PIN does not oblige the Council to make the purchase referred to in the Prior Information Notice. If a positive response is received from the market, Officers will seek Executive authority to invite tenders and approve the pre-tender considerations and the criteria to be used to evaluate tenders before a contract notice is published. The description of the nature and scope of works can be amended when the contract notice is subsequently advertised.

**5.0 Financial Implications**

*Tender submission assumptions- target rent*

- 5.1 The change in rents will help to ensure that the South Kilburn regeneration model is viable. Clearly the current economic climate is one of uncertainty, not least regarding continuing depressed sales values and reductions in grant funding for affordable housing. Nevertheless, officers remain confident that the overall phasing strategy can be sustained into future phases.
- 5.2 A report was produced by Navigant in spring 2011 which considered the financial viability of the delivery of the South Kilburn programme based on current rents and target rents. On the basis of this report the following conclusions have been drawn:
- At current rent levels a deficit would be produced and the regeneration of the area would not be viable.
  - The new 80% market rent model is considered to be unaffordable for residents.
  - The Navigant proposal for delivery of the programme based on target rents at £96.94 per week for a one bedroom property, £103.23 for a two bed property, £109.53 for a three bed property and £115.83 for a

four bed property are considered to be acceptable in terms of affordability for residents and programme viability.

*Financial implications for the Disposal of Sites and Progression of Sites to detailed planning application*

- 5.3 The table below summarises the current forecast position for the progression of the South Kilburn Regeneration Project in 2011/12, including those Phase 2 elements referred to in this report.

<b>South Kilburn Regeneration Programme</b>	<b>£</b>
<u>Forecast Expenditure</u>	
Masterplanning	200,000.00
General Development Costs	1,000,000.00
Albert Road Day Care centre	4,300,000.00
Bronte/ Fielding development site	800,000.00
Site 18 ( Queens Park Station)	800,000.00
Site 11B ( Albert Road)	100,000.00
Leaseholder Buyouts	9,000,000.00
Site 3c ( Roundabout Site)	1,000,000.00
<b>Total Forecast Expenditure</b>	<b>17,200,000.00</b>
<u>Forecast Resources</u>	
Surplus Resources carried forward from 2010/11	11,700,000.00
Forecast Capital Receipts for 2011/12	10,928,000.00
<b>Total Forecast Resources</b>	<b>22,628,000</b>
<b>Forecast Surplus Resources to Carry Forward to 2012/13</b>	<b>5,428,000.00</b>

- 5.4 As indicated in the table above, the resource envelope for taking forward the South Kilburn Regeneration Programme in 2011/12 and beyond is determined by the level of the capital receipts to be secured from the disposals (by way of the 999 year lease) of land.
- 5.5 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.
- 5.6 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 existing Regeneration and Major Projects budgetary provision.
- 5.7 The cost of development of Queens Park Station Area (Site 18) will be met from the overall resource envelope for the regeneration of South Kilburn, specifically including land receipts from Albert Road (Zone 11A) and Carlton Vale Roundabout (Zone 3C) as outlined in the table above. 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.

#### *Procurement of a decentralised energy contract*

- 5.9 Advertising a Prior Information Notice (PIN) in OJEU for a decentralised framework agreement for energy suppliers will enable the Council to maximize interest in the scheme and encourage more beneficial responses such as increased ESCo capital contribution, reduced heat losses and smaller penalties for not delivering enough units per year etc.
- 5.10 It is anticipated that the cost of this Project will be funded from the third party contributions via section 106 money and the contractor's own fund.
- 5.11 Officers are seeking ESCo technical assistance from the GLA. If the free consultancy fails to materialise, Officers will appoint consultants to provide technical support, commercial and financial analysis and programme management. Any costs associated with such appointments will be met from the overall funding envelope for the South Kilburn Regeneration Project.
- 5.12 If after evaluation of the ESCo bidders interest, progression with this element of the project is not deemed financially viable any costs previously met by the Council will be abortive, and as such would have to be recharged to an existing Regeneration and Major Projects revenue budget.

### **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 Neighbourhood Trust 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 Neighbourhood Trust 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.

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*Redevelopment options – The Albert Road Daycare Centre and British Legion (Zone 11B)*



**Appendix 2 – final scoring for architect procurement: Bronte and Fielding House and Queen’s Park Station Area**

Bronte and Fielding

Architect	Score (out of 170)
Alison Brooks Architects	155
Maccreeanor Lavington Architects	153.3
MAE Architects	151.9
Karakusevic Carson Architects	143.2
Studio Egret West	127.6

Queen’s Park Station Area

Architect	Score (out of 170)
Maccreeanor Lavington Architects	138.4
Karakusevic Carson Architects	130.9
Studio Egret West	130.8
Alison Brooks Architects	128.1
John Lyall Architects	123.7
Cottrel and Vermeulen Architects	116.1

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