



Cabinet
13 March 2017

**Report from the Strategic Director of
Regeneration & Environment**

For Action

Wards affected:
Kilburn

**South Kilburn Regeneration Programme - Transfer of Land
to Network Homes Limited**

1 Summary

- 1.1 This report seeks Cabinet's approval to grant Network Homes Limited who have an Existing Lease of Bronte House and Fielding House, South Kilburn, (under Network Stadium Housing Association Limited) to take a Supplementary Lease for the Property identified as the Public Walkway land and basement between the North Block and East & West Blocks of the Kilburn Quarter (Bronte House and Fielding House) Development.

2 Recommendations

- 2.1 That the Cabinet agree to grant the Supplementary Lease to Network Homes Limited subject to:
- 2.1.1 covenant restricting use at ground floor to un-adopted highways and public open space for the purposes of informal public recreation or as a public garden or other amenity greenspace and to preserve the right of the public to access the land;
 - 2.1.2 covenant restricting use at basement level (as shown on the attached plan – appendix 1) to use as car parking for the residential premises demised by the Existing Lease in accordance with the Planning Permission (as defined by the Agreement for Lease)
 - 2.1.3 confirmation from the District Valuer that a disposal at zero consideration is appropriate; and to the lessee being bound by any third party rights or overriding interests that currently affect the land

3 Detail

- 3.1 A new east-west pedestrian/cycle route across the former Bronte House and Fielding House site has been developed (see Appendix 1), as part of the wider redevelopment of Bronte and Fielding Houses. At the Planning Committee of 20/6/2012 it was not anticipated at that stage that this route would be adopted as a public highway, but clarification on this matter was to be sought. Since Planning Committee it has been identified that part of the strip of land cannot be adopted due to it being above a basement car park where Network Homes Limited, as part of this report, will be the lessee. The Planning, Transport and Licensing Team have advised that they will not adopt any land which has a sub structure underneath it which is under another ownership. Only part of the land being transferred has a sub structure.

The options to the Council are therefore:

1. The Council can retain this route but it will not be managed and maintained by Highways and Infrastructure and would therefore fall to Property Services to manage as a Council asset.
2. The grant of a supplementary lease to Network Homes Limited for the land, which would be private land with reserved public access, and with a requirement to keep to an acceptable standard for public use (as agreed by Development Control) and should be treated as a public rights of way maintained privately, sufficiently maintained and managed. The supplementary lease will thus incorporate a covenant restricting use at ground floor level to un-adopted highways and public open space for the purposes of informal public recreation or as a public garden or other amenity greenspace and will thus preserve the right of the public to access the land.

Option 2 is the recommended option as this would allow for public access without any management and maintenance cost to the Council. Part of the land could be retained by the Council which does not have a sub structure underneath it, but given management and maintenance costs to the Council and inevitable ambiguity over where the Council's site ends and Network Homes Limited begins, this is not deemed prudent.

- 3.2 Network Homes Limited have agreed to take the land, and for it to be maintained to the standard in this report. Furthermore, Network Homes Limited have guaranteed the rights of access for the public.
- 3.3 Under Section 123 of the Local Government Act 1972 the Council has the general power to dispose of properties by way of sale or lease. The essential condition is that the Council obtains the best consideration that is reasonably obtainable unless it is a lease of 7 years or less.
- 3.4 In this instance given that there is currently no obligation for anybody to maintain the land at ground floor, if an accident occurred through lack of maintenance along with day to day cleaning responsibility, this would fall to Property Services. Property Services do not have the resources to take on this responsibility. The land therefore represents a liability to Brent and it is in the Council's interest for it to be leased. However for the purposes of transparency, confirmation will be sought from the District Valuer that a disposal at zero consideration is appropriate.

- 3.5 The supplementary lease will also be granted subject to the condition that the lessee will be bound by any third party rights or overriding interests that currently affect the land.
- 3.6 The current Lease with Network Homes Limited does not include a lease for the basement section of the site below the section shown in appendix 1. The basement section was part of the site which went out to tender, as such it was always envisaged that Network Homes Limited would have a lease of the entire basement. Without the supplementary Lease the basement section which sits under the strip of land shown in appendix 1 would remain with the Council which was never the intention. The supplementary lease will allow for the use of the site as car parking for the residential premises demised by the Existing Lease in accordance with the Planning Permission (as defined in the Agreement for Lease).

4 Financial Implication

- 4.1 The Council are not asking for any receipts from Networks Homes Limited for the transfer of this land nor paying Network Homes Limited for taking the same. A peppercorn rent would apply. Moreover, this de-risks the Council, as potentially there would be maintenance costs that would fall to the Council that will now be avoided.

5 Legal Implications

- 5.1 The Council have engaged Pinsent Masons Solicitors to advise, prepare and execute the Supplementary Lease.
- 5.2 The Local Government Act 1972 provides powers to the Council to dispose of land in any manner it so chooses provided that the Council obtains the best consideration for that land.
- 5.3 In certain circumstances the Council may dispose of land at less than best consideration, these circumstances are set out in circular 06-2003
- 5.4 Accordingly the Council should have regard to:
- a. the benefits that the disposal at less consideration will have for the community.
 - b. the best consideration for land must be examined against the direct benefits associated with the disposal
 - c. the difference between the best consideration and the price paid, must not be more than £2 million.

6 Diversity Implications

The proposed grant of the Supplementary Lease will not change the way the public can access the space, but only who the land is owned and maintained by. Network Homes Limited will be required to guarantee the right of access for the public (at ground floor) and to maintain the land to the appropriate standard.

7 Staffing/Accommodation Implications

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

8 Background Papers

Appendix 1 Plan of area to be transferred

9 Contact Officers

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