



Cabinet

13 March 2017

Report from the Strategic Director of Regeneration and Environment

For Action

Wards affected:
Kilburn

Granville Centre – Delivery of the proposed Enterprise Hub Phase 1

Reason for Urgency

Revisions in the financial structure of the funding of operating, marketing and associated costs in relation to the Phase 1 redevelopment of the Carlton and Granville Centres site require urgent agreement in order to ensure that delivery of Phase 1 can meet the planned timescales.

1 Summary

- 1.1 This report seeks Member approval to amend the financial structure of the funding of operating, marketing and associated costs in relation to the Phase 1 Enterprise Hub proposal, which will result in the transfer of an element of financial risk from the South Kilburn Trust to the Council.

2 Recommendations

That Members:

- 2.1 Approve the proposal to reimburse operating, marketing and associated costs arising from the delivery of Phase 1 of the Carlton and Granville Centres site redevelopment being the refurbishment and reconfiguration of the Granville Centre to allow for an interim Enterprise Hub to be established.
- 2.2 Approve Officers use of the delegated authorities granted by Cabinet on 15 November 2016 to enter into all necessary legal documentation and relevant agreements with the GLA and with the South Kilburn Trust in order to proceed with the delivery of Phase 1 of the Carlton and Granville Centres site redevelopment.
- 2.3 In the event that South Kilburn Trust is unable on advice to provide the commitment to contribute the £2m for Phase 2 of the Carlton and Granville Centres site redevelopment as outlined below in paragraph 3.25, that Members agree to deliver and fund Phase 1 of the Carlton and Granville Centres site redevelopment but to then offer the South Kilburn Trust business space within the Enterprise Hub as tenants of the Council at market value.

3 Detail

Background

- 3.1 The Council, since March 2016, when it originally secured a G.L.A. grant of £1.8m to deliver an Enterprise Hub (“EH”) has been in discussions with the GLA to agree grant terms and also with the South Kilburn Trust (“SK Trust”) to agree the management arrangements of running and operating the EH.
- 3.2 The original proposal was to develop the EH on the site of the O.K. Club, who at that time were signatories to the original proposal submitted and approved by the GLA. Unfortunately the O.K. Club unilaterally withdrew their support with little warning to the other partners which jeopardised the entire initiative. At this point the SK Trust had also committed to contribute £2m from their reserves toward the proposal. This commitment to contribute £2m toward this project remains from the SK Trust.
- 3.3 Swiftly thereafter officers sought to identify an alternative site in South Kilburn and following a review of options the most suitable was deemed to be the Carlton and Granville Centres site. The site was in the right location being in the centre of the South Kilburn regeneration area, it would be adjacent to the proposed Peel development which is seen as creating the civic heart of the regeneration programme as it will deliver the health centre along with new build quality housing; it was also timely in that due to decisions to reduce the delivery of council services from these buildings a large amount of space would be vacated in the following months.
- 3.4 Subsequently on 25 July 2016 Cabinet considered a report which put forward the Granville and Carlton Centres site as the preferred location for the EH. Due to the sudden withdrawal of the OK Club and the imminent danger of losing the GLA grant funding officers did not at that stage embark upon consultation in regard to this proposal. The report contained development options, namely:
- Option 1 – EH at Granville and Residential only at Carlton and
 - Option 2 - Mixed development on both Carlton and Granville Centres (doing nothing was not considered an option).

The option recommended by officers was for comprehensive development (Option 2). This was approved by Cabinet but subject to a further update provided to formally approve final scheme plans and the required capital investment to bring forward the phased redevelopment of the Carlton and Granville Centres and there was to be local consultation.

- 3.5 There were two consequences to this decision. Firstly the GLA Grant Agreement had to be renegotiated. The revised time frame for delivery of the EH, under the comprehensive development proposal, meant that the permanent EH could not be made operational in time. As such, the scheme was split into two phases, Phase 1 being temporary refurbishment of Granville from which the EH could be delivered, with Phase 2 being a comprehensive redevelopment of Granville and Carlton. The GLA grant was eventually reduced to circa £750k to reflect the reduced size and likely outputs achievable under Phase 1. The intention was that the Council would bid in due course for any future funding to assist with the delivery of Phase 2. However SK Trust remained committed to their contribution of £2m in total but requested that the Council guarantee any funding shortfall for Phase 2 as a result of the delayed delivery of the long term EH and the consequent running costs of Phase 1 which would be borne by the SK Trust. Thus in July 2016 the Cabinet approved the following recommendation:

that the Strategic Director for Resources in consultation with the Strategic Director for Regeneration and Environment, Chief Legal Officer and Chief Finance Officer enter into a legal agreement with the South Kilburn Trust and the GLA to secure their funding contributions in return for project delivery of the Enterprise Hub by March 2018, and setting out council commitment to underwrite the shortfall in project funds

- 3.6 The second consequence of the July Cabinet decision to consider comprehensive redevelopment of the site was the strong adverse reaction from a broad range of interested parties. However the July Cabinet had also decided to move responsibility for the delivery of the EH to the Estates Regeneration Team given the site is geographically situated within the Regeneration area and therefore any proposals for the site should be taken in the context of the on-going regeneration and not in isolation. The Estates Regeneration Team were mid-way through a six month public consultation process in regard to a comprehensive review of the Design Masterplan. Therefore the site, which was at the time excluded from the regeneration programme, was brought into consideration and specific public consultation was undertaken with key stakeholders including local ward councillors, occupiers and users of the centres.
- 3.7 This consultation was considered by Cabinet in November 2016. The decision to proceed with Phase 1 of the EH delivery project was approved. The more comprehensive Phase 2 (wider redevelopment of the Carlton and Granville Centres site) received approval to proceed with the procurement of an architecturally led multidisciplinary design team to develop a detailed planning application for redevelopment of Carlton and Granville Centre site.
- 3.8 This November report was supported locally partly as the report recognised the priority objectives of the council being: to secure a permanent enterprise hub, to secure the future of the Nursery School, to secure the future of the Barnardo's operated Children's Centre (within the South Kilburn area although not necessarily on this site) and to secure the future of the Granville Kitchen and Otherwise Club as being incorporated into the Enterprise Hub space. The Design Masterplan also incorporated the site within the Regeneration area as a possible future development site in the context of the wider objectives of the South Kilburn Estates Regeneration Programme.
- 3.9 Whilst the July Cabinet report had agreed to underwrite any gap in funding for the delivery of the EH, the November report stated that there would be no requirement for the council to contribute to Phase 1 over and above that identified in the GLA Grant Agreement of approximately £25k (representing the officer time and design work which had been carried out to date). In the revised grant agreement, in regards to match funding this meant that the Council's contribution would effectively be its contribution of the site and £25k whilst the SK Trust agreed to bear the first five years' operating, marketing and other associated costs of Phase 1 estimated at circa £950k over the five year period. SK Trust officials believed they could cover these costs from their proposed £2m contribution to the delivery of the overall EH project as approved by their Board of Trustees. Both the GLA and SK Trust were willing to proceed with the EH proposal on the basis set out in the November report.
- 3.10 A breakdown of the first five years' operating, marketing and other associated costs of Phase 1 estimated at circa £950k, prepared by the SK Trust cost consultant is attached as Appendix 1. As can be seen the major part of this sum is building running costs, e.g. business rates, utility costs, repairs and maintenance costs and management of the building.

- 3.11 Since the November 2016 Cabinet report all three parties have been working toward finalising the various necessary legal documents which the November Cabinet had delegated to the Chief Executive for final approval and sign-off on behalf of the Council. As at the end of February these documents were in near final form and capable of completion, however very late legal advice provided to the Board of Trustees of the SK Trust has meant that the Board of Trustees no longer feel they are able to enter into an arrangement which would require the SK Trust to fund the Phase 1 operating and other costs.
- 3.12 To précis the SK Trust Board legal advice: the lack of certainty of delivery of Phase 2, which is subject to the Council's viability test and other considerations at the relevant time, means that there is a probability it may not transpire. Progressing the scheme on the basis on which negotiations have been held since November 2016 is therefore something that the SK Trust's Board is no longer able to recommended.. In effect the advice appears to be stating that if Phase 2 did not materialise this relatively sizeable financial commitment, without any permanent long term EH could jeopardise the existence of the SK Trust.
- 3.13 For the avoidance of doubt, this is a summary of the position that the SK Trust has conveyed to the council. Legal advice provided to the SK Trust is a matter for the Trust and the council is not entitled to rely on it in its decision making. However, unless the SK Trust change their position then the scheme as envisaged cannot proceed, and so unless it is to be abandoned an alternative funding structure must be found. The council is committed to the full development, including Phases 1 and 2, but has quite properly avoided making binding contractual commitments to Phase 2 in order to protect taxpayers' financial interests - for example enabling it not to proceed with Phase 2 if costs rose significantly above budget or unusual market conditions, such as a property price crash. These contractual safeguards are normal, right and proper in such transactions, and thus it is legally correct for the SK Trust referring to a "probability" of Phase 2 not proceeding, notwithstanding that the council is committed to achieving it.
- 3.14 Officers are of the opinion that this problem must be made known to Cabinet alongside an alternative funding proposal which, if agreed, will enable this popular proposal to finally be agreed and implemented.

Council Commitments:

- 3.15 To date the council has committed (but not yet spent) £1m capital to fund the appointment of a Design Team and other consultants in order to ascertain the options for delivery for the permanent EH and wider redevelopment (Phase 2) on this site. It has already selected the architectural practice for Phase 1 design and in a separate report to this Cabinet is seeking approval to procure a contractor for the building works on Phase1.
- 3.16 The Council has also established two Project Boards for Phase 1 and Phase 2, the latter being Chaired by the Lead member and comprising representatives from all the current occupiers on site as well as the GLA and SK Trust.
- 3.17 The Council is also seeking to appoint a Building Heritage Specialist to advise on the historic and architectural merits of these two buildings so as to be better informed and to allay local concerns prior to considering any intrusive development options.
- 3.18 Therefore the Council has shown it is fully committed to the successful delivery of Phase1, and subject to viability, Phase 2 but now needs to consider the problem presented by the SK Trust legal advice in regard to match funding and the operating

and other costs estimated to be incurred over the first five years of the interim Phase1 EH.

Other Considerations:

- 3.19 There are various negative impacts detailed below if a solution cannot be found to the current impasse thrown up by the late legal advice provided to the Trustees of the SK Trust.
- 3.20 Many years ago when the Council ceased using the Area Housing Office in South Kilburn, Estates Regeneration created a meanwhile use of the porta-cabins on site to avoid the building being void prior to bringing forward the Peel development. This meanwhile use, which was originally set up and run directly by the Council, was transferred to the SK Trust and, over the intervening years, they have grown it into a well-respected business start-up and entrepreneur hub which is recognised both locally and nationally as successful; The South Kilburn Studios.
- 3.21 Although this has always been known to be a meanwhile use. Its success and presence in South Kilburn would seem to lend itself to the Council seeking to find a way to retain this popular local facility. Therefore the proposal is, if the Granville EH Phase 1 can be achieved then all existing businesses and entrepreneurs currently operating in the Studios could simply move across to the Granville Centre. Indeed in the nascent Council work place strategy, the SK Studios and the proposed Granville EH feature as one of the four identified locations for a Borough wide work place strategy.
- 3.22 Once again the timing of any decision is critical because the “pull” factor to secure the relocation of the Studios to the Granville as part of the EH Phase 1 proposal is matched by a “push” factor in the form of the proposed Peel Development. Planning Committee in February 2017 resolved to grant planning permission for the Peel site which includes 226 units (42 affordable), a new health centre with flexible first floor space, retail units and public realm improvements (including a new public space). Specifically on the site of the SK Studios will be built the affordable housing element of this scheme. Thus rather than having to close the facility to enable development to be able to secure its future by enabling relocation to the Granville Centre would be a “win-win” local community. The site of the SK Trust is also required for the Peel development, to allow for a local GP practice on the Peel site to move to whilst the new health centre is built.
- 3.23 There are currently 28 tenant businesses with approximately another 20 regular casual businesses (operators/makers/groups) utilising the SK Studios.

Proposed Solution

- 3.24 The only major issue preventing a successful outcome to the delivery of Phase 1 EH appears to be the problem SK Trust now have in being unable to fund the first five years of the interim hub from their £2m commitment.
- 3.25 Officers consider a solution could be for the council to agree to reimburse the SK Trust annually in arrear for costs incurred, as set out in the Cost Consultant’s report or as agreed between the parties. This reimbursement would be subject to audit by Corporate Finance and any contribution over the five year period would be no greater than the sum stipulated in the GLA Grant Agreement as match finding (£950k). Any revenue secured by the SK Trust in operating the EH would be deducted from any gross expenditure prior to any council reimbursement of net expenditure incurred in any financial year. In return SK Trust would guarantee to contribute the full £2m toward the construction and

operating costs of any Phase 2 EH and the council commitment to fund any shortfall would fall away, although it could in future choose to do so.

Conclusion

- 3.26 On the basis that Phase 2 is delivered the overall cost position can be considered to be broadly neutral to both SK Trust and the Council if the commitments made in previous Cabinet decisions are taken into account. The SK Trust will contribute the £2m from their reserves for Phase 2 as originally proposed and Brent Council will fund Phase 1 operating costs rather than commit to underwrite any reduction in original grant sum from GLA which has reduced from £1.8m to circa £750k
- 3.27 The delivery of the EH should not be seen in isolation but an important piece of creating a truly regenerated, both physically and socio-economically, South Kilburn.
- 3.28 Whilst Officers favour the solution proposed in paragraph 3.25 to overcome current issues, if SK Trust on legal or other advice determine that they are unable to guarantee to contribute the full £2m toward the construction and operating costs of any Phase 2 EH, Officers do not consider the EH scheme should be abandoned and would recommend the Council deliver and fund Phase 1 but to then offer the SK Trust business space within the EH as tenants of the Council. The Council would still wish to secure GLA funding for the EH and discussions would be held with the GLA regarding this revised proposal only if it became necessary.

4 Financial Implication

- 4.1 The proposal, or at any rate the part of it relevant to this report, at the time of the November Cabinet decision, could reasonably have been summarised as being that the SK Trust would contribute £2m to the project. Of this, up to £0.95m would have been contributed in Phase 1 and the balance in Phase 2. It is now proposed, in essence, that the SK Trust should make its entire financial commitment in Phase 2. The total amount to be committed by the SK Trust is proposed to remain at £2m; it is only the timing of these payments that are proposed to change.
- 4.2 However, this change in the profiling of the payments also materially changes the balance of risk between the parties. As set out at paragraph 3.13, the council has every intention of ensuring that Phase 2 in due course takes place. Nonetheless, it must ensure that the council, and ultimately local residents, have reasonable protections against uncertain future events, such as a substantial rise in costs, which could render Phase 2 unaffordable.
- 4.3 In financial parlance, therefore, costs in Phase 1 are potentially 'abortive', as they may be incurred attempting to enable Phase 2 to take place, only to find eventually that this cannot be achieved. If Phase 2 did not take place then abortive costs would have been wasted, or at least significantly less value achieved from them than was intended. There is nothing unusual about this; dealing with the risk of abortive costs is common to all projects of this nature.
- 4.4 This report, however, proposes that the council bears £0.95m of risk of abortive costs which, as at the position in the November report, were carried by the SK Trust. This is in addition to the £1m of design fees referred to at 3.15 which are similarly at risk. The proposal therefore shifts the financial risk profile of the project significantly against the council.

- 4.5 However, it is important to emphasise that risk is best expressed as the product of the likelihood of unfavourable events occurring and the consequence if they do. It is easy to quantify the consequences, in this case a risk transfer of abortive costs of £0.95m. It is much less easy to quantify the likelihood of Phase 2 not proceeding. Given the strong economic fundamentals in the South Kilburn area this would be relatively low; that said, construction costs inflation indices are rising quickly and hence the risk is not negligible. For illustrative purposes, if the risk of Phase 2 not proceeding was considered to be one in ten then the fair cost to attribute to this proposed decision would be £95,000.
- 4.6 In practice, any actual abortive costs, if incurred, would have to be met by reducing other commitments within the council's capital programme, which risk will be taken into account in future budget planning.

5 Legal Implications

- 5.1 SK Trust's revised position is summarised in paragraphs 3.11 – 3.13. As indicated in paragraph 3.13, the legal advice provided to the SK Trust is a matter for the Trust and the council is not entitled to rely on it in its decision making. However, the council is able to rely on SK Trust's clear indication that it is not prepared to proceed with the EH proposal on the current basis and unless the SK Trust change their position then the scheme as envisaged cannot proceed.
- 5.2 In view of the SK Trust's current position, should the approach outlined in paragraph 3.25 of this report be pursued, a revision in proposed legal agreements will be required in order to reflect the change in the profiling of the payments due from the various parties and to ensure that the Council receives a binding commitment from SK Trust to fund £2m towards Phase 2. Both GLA and SK Trust agreement will be required to the proposed changes to agreements.
- 5.3 As detailed in paragraph 3.28 if SK Trust on legal or other advice determine that they are unable to guarantee to contribute the full £2m toward the construction and operating costs of any Phase 2 EH, it is recommended the Council fund Phase 1 but then offer the SK Trust business space within the Enterprise Hub as tenants of the Council. This will require agreement from the GLA and amendment to the current proposed grant agreement. This would also require the Council to enter into tenancy arrangements with SK Trust.
- 5.4 Legal Implications contained within reports to Cabinet on 25 July 2016 and 15 November 2016 regarding the EH scheme remain relevant

6 Equality Implications

- 6.1 A screening analysis of the likely impact of the proposals to deliver the EH was attached to the November 2016 Cabinet report and it concluded that, in line with the deliverables and outcomes set out in the business case, the impact for protected groups will be positive. The proposals contained in this report would not affect this conclusion.

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

- Cabinet Paper.

9 Contact Officers

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