



**Cabinet**  
19 June 2017

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

For Action

Wards affected:  
Kilburn

**Gloucester House and Durham Court – South Kilburn -  
Appropriation of Housing and Non Housing Land and Open  
Space**

**1 Summary**

- 1.1 The regeneration of South Kilburn is a fifteen year programme that is approximately half way through. It aims to transform the area into a sustainable and mixed neighbourhood and create a real sense of place and belonging. The programme will deliver around 2,400 new homes of which 1,200 will be made available for social rent for existing South Kilburn, secure council tenants. To date 1073 new homes have been delivered with 60% (639) new homes having been made available for existing secure tenants of South Kilburn. Woodhouse Urban Park was opened to the public in May 2016 and South Kilburn residents are able to utilise St Augustine's Sports Hall.
- 1.2 The Council's objective is to provide high quality new homes with values driven from market sales in order to maintain the viability of the Regeneration Programme in the long-term, and to achieve a substantial improvement in the living conditions of existing South Kilburn secure Council tenants.
- 1.3 The South Kilburn Masterplan review took place in 2016, and the community are at the heart of our decision making process. We have taken an inclusive and participatory approach to consultation and engaged with residents and stakeholders of South Kilburn with extensive local consultation from July through to December, which directly fed into the drafting of a revised South Kilburn Supplementary Planning Document 2017 (SPD). It is due to be considered for adoption at the June 2017 Cabinet and will be an important document in determining how this area continues to transform over the next 10-15 years.
- 1.4 The South Kilburn Regeneration Programme also includes the delivery of a new larger high quality urban park and an improved public realm, a new local primary school, new health facilities, new retail facilities, an Enterprise Hub and Community Space, improved environmental standards and a South Kilburn District Energy System. The South Kilburn Programme has been recognised for exemplar design for new build homes as well as landscape projects and has won a number of prestigious awards.
- 1.5 This report seeks Cabinet approval to advertise the Council's intention to appropriate and thereafter dispose of open space (the open space shown coloured green on the

attached plan – appendix 1) at Gloucester House and Durham Court site, and to appropriate the whole site (the Site) including open space for planning purposes (the Site shown edged red on the attached plan – appendix 1). This is to allow for the redevelopment of the Gloucester House and Durham Court site.

## **2 Recommendations**

- 2.1 Cabinet to approve to commence the advertisement of the Council's intention to appropriate the open space in accordance with its powers set out in section 122 of the Local Government Act 1972 and dispose of open space at Gloucester House and Durham Court Site to a third party in accordance with the provisions of section 233 of the Town and Country Planning Act 1990.
- 2.2 Cabinet to delegate to the Strategic Director of Regeneration and Environment, in consultation with the Lead Member for Regeneration, Growth, Employment and Skills, authority to consider the representations made by the public in response to the advertisement to appropriate and dispose of the open space and thereafter to decide whether to appropriate and dispose of the open space.
- 2.3 Cabinet to delegate to the Strategic Director of Regeneration and Environment in consultation with the Lead Member for Regeneration, Growth, Employment and Skills authority to appropriate the open space at the Gloucester House and Durham Court Site, and appropriate and dispose of the whole Site including open space for planning purposes (shown at appendix 1) if the Strategic Director of Regeneration and Environment in consultation with the Lead Member for Regeneration, Growth, Employment and Skills decides to do so following the consultation. Members are asked to note section 3.9 which outlines what the redevelopment of the Gloucester House and Durham Court site will consist of including the relocation and improvement of the public open space and play area at the north of the site.
- 2.4 Cabinet to delegate to the Strategic Director of Regeneration and Environment and reconfirm its approval to seeking the Secretary of State's consent under section 19 Housing Act 1985 in order to appropriate any part of the land consisting of a house or part of a house.
- 2.5 To note that the whole Site including the open space is no longer required for the purpose for which it is currently used.

### **3 Detail**

#### **Background**

- 3.1 Gloucester House and Durham Court Site is within the wider South Kilburn Regeneration Programme.
- 3.2 Cabinet on the 24 April 2017 resolved:
- Cabinet delegated authority to the Strategic Director of Regeneration and Environment in consultation with the Lead Member Regeneration, Growth, Employment and Skills to award and enter into a Development and Sale Agreement with a Delivery Partner, in line with the redevelopment as set out in paragraph 3.5 of the Cabinet report, procured from the GLA London Development Panel for the Gloucester House and Durham Court site (shown edged red at Appendix 1 to the Cabinet report). The delivery partner provisionally selected, subject to the standard caveats around agreeing final contract terms, is Telford Homes Plc
- 3.3 As part of the Development and Sale Agreement the Council has to appropriate its interest in the whole Site for planning purposes. Section 122 (2A) of the Local Government Act 1972 provides that prior to the appropriation and disposal of open space that the Council must advertise its intention to dispose of the Open Space and to consider representation made by the public in response to the advert. Accordingly, the Council is required to advertise its intention to appropriate and dispose of the open space for two consecutive weeks.
- 3.4 After advertising the Council's intention for a period of two weeks there will be a two week period for consultation in which the public may make and submit representation to the Council in relation to its intention. After the two week consultation period the Strategic Director of Regeneration and Environment, in consultation with the Lead Member for Regeneration, Growth, Employment and Skills, will decide whether the appropriation and disposal of the open space, should occur having first taken into consideration the representations made.
- 3.5 Appropriation of the whole Site for planning purposes will facilitate the carrying out of the development. There is a compelling case in the public interest to appropriate the open space and the Site for planning purposes as developing the Site would serve in the public interest and accordingly, such development outweighs the effect of the acquisition on the rights of individuals. In addition, the development and regeneration will ultimately contribute to the economic and social well being of the area.
- 3.6 If a third party is able to establish an easement or a right over parts of the Site (the easements could include but are not limited to a right of way or a right to light) then the third party could potentially prevent the development and regeneration of the Site and apply for an injunction to prevent the conclusion of the development. The effect of appropriation is therefore to facilitate the re-development and improvement of the Site and to override third party rights and interests in the Site that may exist. It should be noted that third parties may be entitled to compensation for loss of their rights. The Development and Sale Agreement includes that the Developer will indemnify the Council in relation to any claims for compensation arising.
- 3.7 A detailed planning application for the redevelopment of the site was submitted on 9 May 2014, resolution to grant planning permission was given on 20 August 2014 (case number 14/1896) and a planning decision notice was issued on 23 September 2014.

- 3.8 On 9 May 2014 a Compulsory Purchase Order (CPO) for land surrounding and including Gloucester House and Durham Court was made. The CPO was confirmed by the Secretary of State for Communities and Local Government on 20th February 2015.
- 3.9 The redevelopment of Gloucester House and Durham Court site consists of:
- The demolition of 209 residential units and garages contained within the Gloucester House and Durham Court site
  - Erection of 236 new residential units - market sale (134 new homes) and affordable social rented (102 new homes)
  - Relocation and improvement of the public open space and play area at the north of the Site
  - New public realm and improved routes through the Site
  - Landscaped private and shared gardens
  - Basement car park providing 91 spaces
  - Space for an energy centre for the South Kilburn District Energy System.
  - Market and affordable dwellings including a range of 1 to 4 bed flats and 3 and 4 bed duplex family units
- 3.10 The appropriation includes open space with a public children's play area, however a new replacement play area will be provided. The Planning Committee Report of 20 August 2014 identified that in order to justify the proposed redevelopment it is important that the replacement facility is of a significantly improved quality. The report found that overall, the proposals appear to be of sufficient quality to justify the redevelopment of the existing play area and inconvenience that will be caused during construction when no play area will be provided.
- 3.11 It should also be noted that Paddington Recreation Ground is around 330m away, South Kilburn Urban Park approximately 400m away and in May 2016 the new Woodhouse Urban Park in South Kilburn opened which is just over 500m away.

#### **4 Financial Implication**

- 4.1 There will be minor costs associated with the appropriation in respect of the advertisement costs. These are covered by existing budgets. Not doing the consultation would prevent appropriating the land, risking stopping the entire project from taking place.
- 4.2 Claims could be made against the Council in respect of loss of third party rights, but as discussed above there will be indemnity within the Development and Sale Agreement in respect of this.

#### **5 Legal Implications**

- 5.1 Cabinet is advised that section 122 of the Local Government Act 1972 provides that a Council may appropriate land from one purpose to another if immediately before the appropriation the land is no longer required for the purpose for which it is held. S122(a) provides an additional requirement in relation to the appropriation of Open Space which is to advertise the Council's intention to appropriate the open space for two consecutive weeks and consider the representations made by the public. S123(2A) also imposes a similar requirement to advertise the intention to dispose of open space for two consecutive weeks and consider the representations made by the public.
- 5.2 Once appropriation has taken place section 233 of the Town and Country Planning Act 1990 (the 1990 Act) enables the Council to dispose of the land appropriated for planning purposes to such person in such manner and subject to such condition as appear to the Council to be expedient in order to secure the best use of the land or to secure the

erection construction or carrying out on the site any buildings or works appearing to be needed. The consent of the Secretary of State is needed where the disposal of the Site is for less than the best consideration that can reasonably be obtained except in the case of leases for a term of less than 7 years.

- 5.3 Provided that the land is validly appropriated then under section 203 of the Housing and Planning Act 2016 the interest of third parties will be overridden, provided that planning permission has been obtained and used for the building or maintenance work to be undertaken on the site and the maintenance or building work must be for a purpose related to the purpose for which the land was acquired, vested or appropriated.
- 5.4 Using Section 203 to override easements such as rights to light, allows the construction or maintenance work to be carried out even if it interferes with such a right, compensation will need to be paid.
- 5.5 Prior to development however it is prudent to make enquiries of what rights might exist over the land. This will involve inspection of the site to see if there are any obvious rights and checking land ownership records.
- 5.6 The Council should obtain the consent of the Secretary of State under section 19 Housing Act 1985 in order to appropriate any part of the land consisting of a house or part of a house.

## **6 Diversity Implications**

- 6.1 This report seeks Cabinet approval to advertise the Council's intention to appropriate and thereafter dispose of open space at Gloucester House and Durham Court site, and to appropriate the whole site including open space for planning purposes. The appropriation is not altering existing plans for the site, but is a statutory process required.
- 6.2 All secure tenants and leaseholders have already vacated the site. Secure tenants have been re-housed predominantly into an earlier phase of the South Kilburn Regeneration Programme.
- 6.3 The appropriation includes open space with a public children's play area however a new replacement play area will be provided. Whilst the community will be without the open space during the construction period, it is important to note that there will be a re-provision following the completion of the development.
- 6.4 The Planning Committee Report of 20 August 2014 identified that in order to justify the proposed redevelopment it is important that the replacement facility is of a significantly improved quality. The report found that the proposals appear to be of sufficient quality to justify the redevelopment of the existing play area and inconvenience that will be caused during construction when no play area will be provided.
- 6.5 There is a need to ensure that the Council's Equality Analysis in relation to the different projects comprising the South Kilburn regeneration programme and their impact on residents (including leaseholders) with protected characteristics is kept up to date, and that reports to Members provide sufficient information to demonstrate adequate consideration of the impacts on all protected groups.
- 6.6 As with all other schemes that are part of the South Kilburn regeneration programme, full consideration must be given to residents and leaseholder with protected characteristics, particularly people with disabilities and / or other types of vulnerabilities due to older age, children and young people, residents with childcare and/or caring responsibilities, socio-economic status (lone parents and large families).

- 6.7 All of the proposed units will be constructed to be Lifetime Homes compliant. Ten percent of all units will be designed to be wheelchair accessible, or easily adaptable properties and the allocation process includes officers reviewing occupational therapy (OT) requirements for secure tenants so that their physical needs can be pre-built into the scheme such that their individual homes are tailored to take account of any identified OT needs.
- 6.8 Due regard must be paid to black, Asian and minority ethnic and religious groups (e.g. community ties and wider community infrastructure, needs of large families, etc). The proposed development would contribute towards the wider rebalancing of the affordable unit mix across South Kilburn where the aim is to provide a greater proportion of larger, three and four bedroom units.

## **7 Staffing/Accommodation Implications**

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

## **8 Public Services (Social Value) Act 2012**

- 8.1 Not applicable

## **9 Background Papers**

Cabinet reports:

24 April 2017 Gloucester and Durham Development Site – South Kilburn (for Delivery Partner award of contract)

Planning Committee Report

20 August 2014 Committee Report Planning Committee Case No. 14/1896

Appendices

Appendix 1 –Site Plan (including extent of public open space)

## **10 Contact Officers**

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