



Cabinet
23 October 2017

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

For Action

Wards affected:
Kilburn

**Queens Park/Cullen House, South Kilburn - Approval to
bring forward the JV Co or other option to commence
delivery of this project to include procurement of a
construction partner**

1 Purpose of the Report

- 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). The SPD was adopted by Cabinet on the 19 June 2017 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 The report relates to Queens Park/Cullen House, which is a fundamental part of the South Kilburn Regeneration Programme. The Site comprises of Keniston Press (now demolished), Premier House, Salisbury Road public car park, Cullen House and the Falcon Public House together defined as “**Queens Park/Cullen House**” (see appendix 1 – Existing Site Plan).
- 1.6 This report provides an update on the progress regarding the Joint Venture with London & Newcastle Capital Limited (**LN**) but also sets out a contingency option to acquire the Falcon Public House (FPH).
- 1.7 The report also seeks approval to procure a construction partner. However if the JV can be established then Recommendations 2.2; 2.3; 2.4 ; 2.5 and 2.6 would not be required to be implemented. The appointment and selection of a construction partner would then fall within the remit of the JV Board.
- 1.8 This report also seeks approval to set rent levels at Homes and Communities Agency target rents as well as seeking approvals in relation to property issues relating to the Queens Park/Cullen House Site.

2 Recommendations

That Members:

- 2.1 Note the significant progress made on the technical issues and the current position as set out in paragraph 3.6 and 3.7 with regard to progress in establishing a Joint Venture Company with London & Newcastle Capital Limited for the comprehensive redevelopment of the Queens Park/Cullen House project.
- 2.2 Delegate to the Strategic Director of Regeneration and Environment in consultation with the Lead Member Regeneration, Growth, Employment and Skills authority to implement the contingency option detailed in paragraph 3.8 (the “Contingency Option”) should it not be possible to agree the terms of the Joint Venture.
- 2.3 Authorise Officers to negotiate a buyout of London & Newcastle Capital Limited’s interest in the Falcon Public House in order to bring the site forward for development, should the Contingency Option be selected.
- 2.4 Approve the procurement of a construction partner for the Queens Park/Cullen House site either through a mini-competition using an appropriate Framework or alternatively through a Competitive Procedure with Negotiation under the Public Contracts Regulations 2015 on the basis of the pre-tender considerations and evaluating the tenders on the basis of the evaluation criteria set out in (Appendix 3) should the Contingency Option be selected.
- 2.5 Delegate to the Strategic Director of Regeneration & Environment in consultation with the Lead Member of Regeneration, Growth, Employment and Skills, authority to select the appropriate procurement route outlined in 2.4 above for the reasons detailed in paragraph 3.11.
- 2.6 Delegate authority to award a contract for a construction partner for the Queens Park/Cullen House site to the Strategic Director of Regeneration & Environment

in consultation with the Lead Member of Regeneration, Growth, Employment and Skills for the reasons detailed in paragraph 3.14. should the Contingency Option be selected

- 2.7 Approve the setting of rent levels for the affordable homes at the Queens Park/Cullen House site once complete, at a rent equivalent to the H.C.A. Target Rent levels.
- 2.8 To agree in principle that the Council acquire a long lease of Networks Rail's interest. A further report will be presented to Members on the terms negotiated for this proposed purchase which will help to bring the site forward for redevelopment .
- 2.9 To agree that officers negotiate and enter into Heads of Terms with Transport for London for the delivery of their new offices.

3 Detail

Background

- 3.1 The Council's Scheme for the redevelopment of the Queens Park/Cullen House has the benefit of full detailed planning permission granted in 2012 and has since secured further planning approvals which made adjustments to the original consent most recently in 2017. These adjustments are considered to improve the original scheme but not materially alter the original scheme.
- 3.2 Queens Park/Cullen House is a consented scheme and a vital part of the South Kilburn Regeneration Programme currently sitting within Phase 3a/3b. The redevelopment will provide 137 new high quality homes of which 39 will be for social rent for existing secure tenants of South Kilburn, along with new public space, 1270 sqm of commercial space, 959 sqm of office space and a new signalled junction at Kilburn Lane.
- 3.3 The scheme will require the closure of the existing spur road and the introduction of a new signalled junction at Kilburn Lane. The Public Notice advising of the intention to close this road has been published and consultations have taken place with Westminster City Council. A Stopping up Order is due to be heard at General Purposes Committee seeking approval in December 2017.
- 3.4 This development has been in abeyance since 2012 when HS2 safeguarded the site for a vent shaft and ATS. This HS2 safeguarding is now removed enabling development to proceed. As such the Council is currently extinguishing third party interests on the land owned by the Council and has secured vacant possession of Cullen House.
- 3.5 The Council did not take the opportunity to acquire the Falcon Public House when it was placed on the market by the former owners, Greene King, and consequently the site was acquired by private developers, LN, who subsequently approached the Council to propose a joint venture to develop the site. Following discussions between the parties in April 2017 the Cabinet approved for Brent Council to enter into a JV vehicle to bring forward the comprehensive redevelopment of this site as a Limited Liability Partnership (LLP) with London &

Newcastle Capital Limited, or a member of its group as approved by the Council. (Appendix 2 – (Site 18) Queens Park/Cullen Cabinet Report April 2017).

- 3.6 To date reasonable progress has been made in agreeing the Heads of Terms of the JV but the final details remain unresolved. A proposal is currently being considered by both parties to unlock the impasse and if acceptable would mean that the JVV could be set up before the end of 2017 and, subject to various technical and legal matters including HS2 consent, would allow a start on site Spring 2018. Both parties are striving to narrow the contractual differences and it would appear the genuine desire and preference on both sides is to conclude the negotiations by establishing the JVV. Brent has identified the Directors who will be on this JVV Board and are making preparations to ensure officers are fully briefed as to their roles and responsibilities.
- 3.7 However, it is considered prudent to now contemplate the possibility of these remaining issues taking too long to resolve; the delay does have a knock impact for the Council in regard to other SK Regen projects due to the need to be able to relocate tenants whilst keeping them on the estate, or these final issues may just not be capable of settlement. Therefore this report also seeks, as a contingency measure, to be utilised only once it is clear that the JVV cannot be formed in a reasonable time frame for authority to proceed with this scheme by acquiring the Falcon PH.
- 3.8 The Cabinet has previously delegated authority to the Strategic Director of Regeneration and Environment in consultation with the Lead Member Regeneration, Growth, Employment and Skills, to agree terms for creation and entry into a joint venture based on the draft Heads of Terms approved by Cabinet. If this is not possible, the proposed contingency option would require officers purchasing LN's interest in the Falcon PH and the procurement of a delivery partner to develop the Queens Park/Cullen House site. This additional authority is merely to provide a contingency option should it be determined that the JVV cannot be entered into by Brent Council. It is envisaged that this contingency option would only be contemplated where the parties have not been able to enter into the JV within, say three months of this decision.
- 3.9 The Council has acquired by agreement all leasehold interests in Cullen House and all secure tenants have moved to alternative homes within the South Kilburn Estate. It is in the process of removing all other third party interests and seeking to acquire a long lease of land owned by Network Rail. The Falcon Public House is still operational and Premier House, which is owned and occupied by TfL, will also remain operational until new purpose built offices are available to TfL to relocate. The Council is also seeking to enter into Heads of Terms with TfL to facilitate their relocation to the proposed new office space

Delivery Partner

- 3.10 Should it not be possible to agree terms of a JV with LN, the Officers consider a Delivery Partner should be procured ahead of the site being fully vacant in order to speed up delivery timescales for both delivering the new homes, but also to assist with the wider South Kilburn programme. It is hoped that by the time a delivery partner is on board the site will be fully vacant and under the ownership of Brent Council. The procurement options currently being considered are:

- Procurement using the Competitive Procedure with Negotiation under the Public Contracts Regulations 2015 (PCR 2015);
- Procurement by way of a mini competition using a framework that has itself been procured under the PCR 2015.

The current estimated target for a start on site is the spring/summer 2018

- 3.11 Officers preferred procurement route for the selection of a delivery partner is by means of a mini competition using an appropriate framework. Officers are currently reviewing a range of possible frameworks. Should the frameworks prove to be unsuitable however, then Officers would wish to proceed with a procurement using the Competitive Procedure with Negotiation under the PCR 2015.
- 3.12 Given that Officers have not yet identified a suitable framework, Cabinet approval is sought to delegate authority to the Strategic Director of Regeneration & Environment in consultation with the Lead Member of Regeneration and Environment, to select the appropriate procurement route.
- 3.13 Should the Competitive Procedure with Negotiation procurement route be selected, Cabinet is asked to give its approval to the pre-tender considerations set out in Appendix 3 and in accordance with Standing Order 89.
- 3.14 Officers are conscious of the ongoing delays to the Queens Park/Cullen House project. Should it be appropriate to proceed with the procurement of a delivery partner, negotiations with LN having failed to result in agreement on the JV, Officers recommend that to avoid further delay authority to award the contract for a delivery partner is delegated to the Strategic Director of Regeneration & Environment in consultation with the Lead Member of Regeneration, Growth, Employment and Skills.

Target Rents

- 3.15 On 18 July 2011 the Executive adopted HCA Target Rent level equivalence for affordable developments in South Kilburn. HCA Target Rent level equivalence was considered the only realistic way of affording the South Kilburn regeneration programme and avoiding the requirement for large amounts of grant that would not in themselves be certain of being awarded and, if awarded, would require rents to be increased to the new higher 'affordable rent' levels of up to 80% market rents.
- 3.16 Target Rents are calculated by a formula, the basis of which is set out below. Target Rent increases are also pegged to inflation and subject to an overall cap:
- 30% of a property's Target Rent is based on relative property values compared to the national average
 - 70% of a property's Target Rent is based on relative local earnings compared to the national average
 - A bedroom factor is then applied so that, other things being equal, smaller properties have lower rent

3.17 Between 2010/11 and 2014/15 increases in Target Rent levels and caps were linked to RPI as set out in the tables below:

Year	Guideline Limit	All Items RPI changes at Previous September	Guideline Limit for rent changes	Maximum increase to individual rent
1/4/2014 to 31/3/2015	RPI + 0.5%	+ 3.2%	+ 3.7%	+ 3.7% plus £2 per week
1/4/2013 to 31/3/2014	RPI + 0.5%	+ 2.6%	+ 3.1%	+ 3.1% plus £2 per week
1/4/2012 to 31/3/2013	RPI + 0.5%	+ 5.6%	+ 6.1%	+ 6.1% plus £2 per week
1/4/2011 to 31/3/2012	RPI + 0.5%	+ 4.6%	+ 5.1%	+ 5.1% plus £2 per week
1/4/2010 to 31/3/2011	RPI + 0.5%	- 1.4%	- 0.9%	- 0.9% plus £2 per week
Year	Rent Cap Change limit		All Items RPI change at the Previous September	Change in rent cap Levels
1/4/2014 to 31/3/2015	RPI + 1.0%		+ 3.2%	+ 4.2%
1/4/2013 to 31/3/2014	RPI + 1.0%		+ 2.6%	+ 3.6%
1/4/2012 to 31/3/2013	RPI + 1.0%		+ 5.6%	+ 6.6%
1/4/2011 to 31/3/2012	RPI + 1.0%		+ 4.6%	+ 5.6%
1/4/2010 to 31/3/2011	RPI + 1.0%		- 1.4%	- 0.4%

3.18 In 2015/16 however this policy was reversed with rents in the social sector reducing by 1% per annum for four years from 1st April 2016.

Target & Formula Rent Caps 2015-16 have now been published as below:

Number of Bedrooms	Rent Cap
0 or 1	£141.43
2	£149.74
3	£158.06
4	£166.37
5	£174.69
6 or more	£183.00

3.19 New social rented properties developed in South Kilburn are worth more than existing Council properties, so attract a higher Target Rent under the formula outlined. Any inflationary rent increases on these new properties, would therefore also be higher in monetary terms.

3.20 In line with the Council's commitment to maintaining current HCA Target Rent level equivalence in regeneration areas it is recommended that the Cabinet agree to set the rent levels for the affordable units at the Queens Park/Cullen House site once complete, at rents equivalent to the HCA Target Rent levels.

4 Financial Implications

- 4.1 The aim of the financial model for the South Kilburn regeneration programme is to be self-financing within the funding envelope generated from on-going disposals. The capital receipts generated are reinvested back into the South Kilburn regeneration programme, to enable the rolling regeneration programme that delivers new homes.
- 4.2 The South Kilburn model has traditionally worked through a process of procuring delivery partners, who develop an existing site and generate high value properties. In return for this site, they build affordable and social housing, while also delivering capital receipts to support the capital programme.
- 4.3 The Council, if it entered into the proposed JV model, would wish to be assured that the terms secured through that were more favourable, taking all of the relevant factors into account, than those that could be achieved through the approach adopted to date, as described above. The financial modelling undertaken provisionally demonstrates that this would be the case. There would be a very different set of cash flows, as under this option the council would be taking on a share of the development costs, in exchange for longer-term returns.
- 4.4 The cost of the procurement process will be paid out of existing budgets.

5 Legal Implications

- 5.1 Should it not be possible for the council and LN to agree the terms of the Joint Venture, Officers are seeking the option to pursue the delivery of the comprehensive redevelopment of the Queens Park / Cullen House project through the negotiated acquisition of LN's interest in the Falcon Public House and the appointment of a delivery partner. Delegated authority is sought enabling the Strategic Director of Regeneration and Environment in consultation with the Lead Member Regeneration, Growth, Employment and Skills authority to decide whether to proceed with a Joint Venture with LN for the comprehensive redevelopment of the Queens Park/Cullen House project or alternatively to procure a delivery partner for the redevelopment.
- 5.2 Should the Strategic Director consider that the selection of an alternative delivery partner is preferred then where the Council utilises a development agreement in respect of the land, it will need to undertake some form of procurement process which is compliant with EU law in order to identify a partner to carry out the development. The Court of Justice 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
- 5.3 As indicated in paragraph 3.11, Officers' preferred procurement approach is the use of a suitable framework that has been procured pursuant to the PCR 2015. The Council would be required to operate a mini-competition in accordance with framework rules, to include evaluation using the criteria specified in the framework. In accordance with Contract Standing Order 86 (e) no formal tendering procedures apply where contracts are called off under a Framework Agreement established by another contracting authority though there is a

requirement for the Chief Legal Officer to confirm that participation in the Framework Agreement is legally permissible. Following the operation of a mini-competition Cabinet approval is required for the award of a High Value Contract.

- 5.4 Should it not be possible to identify a suitable framework to procure a delivery partner, the intention is to identify a delivery partner through inviting tenders using the Competitive Procedure with Negotiation under the PCR 2015.
- 5.5 When a Competitive Procedure with Negotiation under the PCR 2015 is used, the value of this proposed procurement over its lifetime will be higher than the EU threshold for Services and the procurement of the contract is therefore governed in full by the PCR 2015. The estimated value of the procurement is in excess of £500k and therefore it will be classed as a High Value Contract under Contract Standing Orders and accordingly the Cabinet must approve the pre-tender considerations set out in (Appendix 3) above (Standing Order 89) and the inviting of tenders (Standing Order 88).
- 5.6 Once the procurement process has been undertaken under the PCR 2015, officers would ordinarily report back to the Cabinet recommending award. However, for the reasons detailed in paragraph 3.14, authority to award the contract for a delivery partner is delegated to the Strategic Director of Regeneration & Environment in consultation with the Lead Member of Regeneration, Growth, Employment and Skills.
- 5.7 Using the Competitive Procedure with Negotiation under the PCR 2015, the Council must observe the requirements of the mandatory minimum ten calendar days standstill period imposed by the PCR 2015 before the contract can be awarded. The requirements include notifying all tenderers in writing of the Council's decision to award and providing the prescribed information which includes the reasons for the decision and the characteristics and relative advantages of the winning bid. The standstill period provides unsuccessful tenderers with an opportunity to challenge the Council's award decision if such challenge is justifiable. However if no challenge or successful challenge is brought during the period, at the end of the standstill period the Council can issue a letter of acceptance to the successful tenderer and the contract may commence.

6 Equality Implications

- 6.1 The new affordable homes in South Kilburn are available to all secure tenants currently living in properties due for demolition as part of the South Kilburn regeneration programme within the neighbourhood. In regards to the Queens Park/Cullen House site, secure tenants within the South Kilburn Regeneration Programme will be offered the opportunity to move into the new affordable (social rent) units. The additional units will be made available to other secure tenants living in properties due for demolition as part of the South Kilburn regeneration programme.
- 6.2 Every effort should be made to provide the secure tenants with suitable alternative accommodation and to reach mutually acceptable agreements with the leaseholders to buy their properties without seeking legal action. When

identifying the options and alternatives put forward, the Council should proactively engage with affected residents and leaseholders.

- 6.3 As with all other schemes that are part of the South Kilburn regeneration programme, full consideration must be given to residents and leaseholders with protected characteristics, particularly people with disabilities and / or other types of vulnerabilities due to older age, childcare and/or caring responsibilities, socio-economic status (lone parents and large families).
- 6.4 The diverse residents and stakeholders impacted have been consulted extensively from July through to December; this directly fed into the drafting of a revised South Kilburn Supplementary Planning Document 2017 (SPD).
- 6.5 There will also be a number of assets which will benefit residents from different backgrounds. For younger people there will be a new larger high quality urban park and a new local primary school. Residents can access an improved public realm and new health facilities which will encourage healthier lifestyles. There will also be new opportunities for jobs and growth through new retail facilities, an Enterprise Hub and Community Space. These elements will address socio economic disadvantage.

Race / Ethnicity

- 6.6 Due to the ethnicity profile of the area, full consideration must be given to the impact on black, Asian and minority ethnic individuals/groups. The Council must also ensure that the options put forward to secure residents and leaseholders, so far as possible, provide reasonable and affordable alternatives that enable them to remain in the area and maintain their family and community ties, as per Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights.

Age/Carers/Disability/Pregnancy and maternity

- 6.7 The requirements for anyone who is older or with a disability, or those who are pregnant or on maternity to have to move from their current property (residential or commercial property) is likely to be more difficult and could suffer greater psychological effects, including stress. (This in turn has an impact on carers).
- 6.8 To mitigate this, for the secure tenants who are moving, the re-housing team provides help to secure tenants through the moving process, additional support and services to those who require it can be provided.
- 6.9 Leaseholders may be affected if they are seeking to acquire a similar sized property in the surrounding area as the value for a Local Authority property tends to be less than a non-Local Authority property. To counteract this leaseholders have been offered the option of shared-equity on the South Kilburn Estate. For those who move off the estate, they may have to increase/get a new mortgage agreement which could be difficult for older residents or those with caring/dependant children responsibilities. The Council has recruited an estate regeneration leasehold liaison officer which will liaise with all leaseholders providing support and guidance as to the options available to relocate or sell their property.

Socio-economic Disadvantage

- 6.10 Target rents are proposed for secure tenants, but it should be noted that new social rented properties being developed in South Kilburn have a higher capital value than existing Council properties and therefore will attract a higher Target Rent under the target rent formula. In line with the Council's commitment to maintaining current HCA Target Rent levels in regeneration areas it is recommended that the Cabinet agree to set the rent levels for the affordable units at the Queens Park/Cullen House site once complete, at rents equivalent to the HCA Target Rent levels.

7 Staffing/Accommodation Implications

- 7.1 There are no specific implications for Council staff or accommodation associated with the proposals contained within this report save as detailed elsewhere in Section 3.

8 Public Services (Social Value) Act 2012

- 8.1 The Council is under duty pursuant to the Public Services (Social Value) Act 2012 ("the Social Value Act") to consider how services being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the council might act with a view to securing that improvement; and whether the council should undertake consultation. This duty does not strictly apply to the proposed contract as it is not a services contract. Nevertheless, Officers have had regard to considerations contained in the Social Value Act in relation to the proposed procurement.
- 8.2 The services to be procured under the Contingency Option aim to improve the economic, social and environmental well-being of residents of South Kilburn through the disposal and development of this site. The new homes will improve living conditions of residents of South Kilburn. The delivery partner will be required prior to a material start (excluding demolition and piling) to inform in writing Brent Works of the projected number of construction jobs and training opportunities to be generated through the development and provide a copy of the Schedule of Works, and, prior to a Material Start to prepare and submit for the Council's approval, an Employment Training Plan for the provision of training, skills and employment initiatives for residents of the Borough relating to the construction phase of the Development and also the operational phase of the Development.
- 8.3 Officers will also have regard to the Social Value Act in its procurement of a delivery partner should it be necessary to proceed with the Contingency Option and seek to implement Social Value considerations where permitted.

9 Background Papers

Appendix 1 – Existing Site Plan

Appendix 2 – Queens Park/Cullen House Site Cabinet Report

Appendix 3 – Standing Order 88 & 89

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