



Cabinet
24 April 2017

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

Wards Affected: Kilburn, Queens Park

**Authority to enter into a Joint Venture Vehicle to bring
about the comprehensive development of the Cullen House
& Falcon P.H. site in South Kilburn Regeneration
Programme Area**

Appendix 2 is Not for Publication

1.0 Summary

- 1.1 This report sets out the detail of a proposal to enter into Heads of Terms with the landowner/developer of the Falcon Public House, London & Newcastle Capital Limited, (**LN**), or a member of its group, in order to proceed with the establishment of a Joint Venture Vehicle to bring forward the comprehensive redevelopment of the Cullen House & Falcon P.H. development site.
- 1.2 This development will involve the demolition of Keniston Press, Premier House, Cullen House and the Falcon public house and the closure of the spur road), together defined as ("**Site 18**"), please see (**Appendix 1**); which is a site that forms part of Phase 2b of the, South Kilburn Regeneration Programme.

2.0 Recommendations

- 2.1 Subject to 2.2 below, to approve the creation and for Brent Council to enter into a joint venture vehicle to bring forward the comprehensive redevelopment of Site 18 through the formation of a Joint Venture Vehicle (JV) as a Limited Liability Partnership (LLP) with London & Newcastle Capital Limited, or a member of its group as approved by the Council (LN) (as the landowner of the Falcon Public House);
- 2.2 Delegate 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 at (**Appendix 2**).

- 2.3 To note the intention to engage Londonewcastle as Development Manager to the JV on terms to be agreed and as approved by the Board of the JV when established
- 2.4 Reconfirm that the development of Site 18 is a key component of the overall South Kilburn Regeneration Masterplan which seeks to bring forward a comprehensive redevelopment of South Kilburn providing new homes and significant social and economic benefits to the area through the regeneration process;
- 2.5 Confirm that the primary purpose of the Council's participation in the JV is the pursuit of socio-economic objectives which are more particularly described in paragraph 3.7 below and are in, overall terms, non-commercial.

3.0 Detail

- 3.1 Site 18 is a consented scheme and a vital part of the South Kilburn Regeneration Programme currently sitting within Phase 2b. The redevelopment consists of the closure of Salusbury Road Car Park, demolition of the adjoining buildings comprising Keniston Press, Premier House, Cullen House and the Falcon public house and the closure of the spur road, with subsequent redevelopment of 137 new high quality homes of which 39 affordable rent 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, as shown edged red on the Plan at (**Appendix 1**). Development of Site 18 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.
- 3.2 Site 18 is predominantly in the ownership of Brent Council with only the TfL Offices (Premier House) and the Falcon PH (recently purchased by Londonewcastle (QP2) LLP), that sit outside the Council's ownership.
- 3.3 By way of background, LN is the developer partner for the private homes at Queens Park Place, opposite Site 18, and have ensured the delivery of high quality private homes which have generated overage payable to the Council in addition to the land sale.
- 3.4 Since purchasing the Falcon P.H., LN has approached the Council and suggested that it would like to deliver the proposed development of Site 18 with the Council.
- 3.5 For a number of months officers from the Estate Regeneration Team and a core group of officers from other departments have been working through technical aspects and undertaking various financial checks and other due diligence action in order to explore this approach to delivery of a joint venture (JV) scheme and also to ensure the Council is acting properly and that this proposition would be to the Council's financial advantage .Therefore should

the Council have the desire to take on the risk of acting as a developer and taking a scheme to full build, then working alongside a known and respected private developer would seem a good entry point. Furthermore establishing a partnership through a JV will have significant advantages to the Council and in particular for South Kilburn and should generate a higher level of financial return which can be reinvested in the wider South Kilburn regeneration programme to achieve the Council's social and economic objectives for the area.

- 3.6 Delivering this scheme with LN via a JV is considered to be the preferred approach to deliver this particular scheme as they already own part of the proposed development site and are therefore the obvious partners should the Council decide to want to bring forward its own scheme. The Estates Regeneration Team has worked successfully with LN on the Queens Park Place scheme and are of the view that LN can add significant private sector expertise to this scheme, due in part to their detailed knowledge of the local market but also their understanding of the private residential market as a whole. This would therefore help to de-risk the proposal for the Council as it would be partnering up with a known entity who has successfully worked with the council on a similar development scheme.

Objectives of the JV

- 3.7 The Council's stated objectives for participation in the JV and the overall aim for the wider South Kilburn Programme (**SKRP**) are contained within the South Kilburn Masterplan Review 2016 (Final Proposal Highlights December 2016) document and the Regeneris Report (Section 5 Assessment of Impact document) and may be summarised as follows:
- The Council have described the overall aim of the SKRP as being:-
 - "to transform the area into a sustainable and mixed neighbourhood and create a real sense of place and belonging"*
 - The current stated objectives, aims and outcomes for the SKRP include the following:
 - (a) *"to provide high quality homes with values driven by 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";*
 - (b) *"to deliver 2400 new high quality homes of which 1200 are available for existing secure tenants of South Kilburn, facilities for primary age provision, a new estate wide energy solution, new retail facilities, an enhanced and improved public realm and a new health centre";*

- (c) *"to implement a number of open and green spaces that vary in scale and character to create a greener and more sustainable South Kilburn";*
 - (d) *"to continue to rebalance the existing housing stock across the area to transform the area into a sustainable and mixed neighbourhood";*
 - (e) *"to create a real sense of place and belonging by meeting needs of the existing residents but also creating sustainability for generations to come"; and*
 - (f) *"working with our developers and contractors to look at offering employment and training opportunities for local residents when sites are brought forward for development"*
- The current stated objectives for participation in the JV and the development of site 18 itself include the following:-
 - (a) ***"directly supporting up to 360 construction years of employment"***. This is described as being a ***"benefit to the local area"*** (due to a high number of unemployed residents seeking employment within the construction sector) and as contributing to the Council's ***"strategic objectives of improving access to employment opportunities for residents"*** ;
 - (b) *"helping the Council to achieve its objectives of improving the quality of the housing stock in the South Kilburn area";*
 - (c) *"helping to deliver a step **change in local quality of life**, raising aspirations and reducing levels of disparity*

Form of JV

3.8 The Council's legal advisors, Pinsent Masons, have reviewed the applicable legislative provisions and the Council's objectives for the scheme (specifically those set out in the South Kilburn Master Plan Review 2016 and section 5 (reference case of the full development of site 18) of the Regeneris Report) and has confirmed that the Council has the requisite power to establish and participate in a JV with LN. The preferred option would be for the corporate JV to be established as a Limited Liability Partnership (LLP) rather than a company limited by shares. The Council has the requisite power to establish the JV as an LLP on the basis that there are reasonable grounds to support the case that the primary purpose of the Council's participation in the LLP is the pursuit of socio-economic objectives which are, in overall terms, non-commercial.

Heads of Terms for the JV

- 3.9 Officers have been in discussions with LN and attached as **(Appendix 2)** are draft Heads of Terms reflecting discussions to date. These set out the funding, budget and governance arrangements of the proposed JV. The Heads of Terms will also contain provision for the JV Board to appoint Londonewcastle as development manager for the scheme and to act as advisers to the JV Board. The Council will have a similar role to Londonewcastle to the JV Board to ensure the delivery of the scheme in accordance with the objectives of the JV as stated in Paragraph 3.7 above
- 3.10 The intention in order to maintain the continuity of work already being carried out on this site by the Design Team is to formally enter into a JV by June 2017. Members will recall the Cabinet report of February 2017 enabled the scheme to be restarted following a number of years in abeyance due to the HS2 safeguarding which, as stated above has now been lifted. In order to meet the proposed June 2017 date, delegated authority for the Strategic Director of Regeneration & Environment is sought to agree the final Heads of Terms.
- 3.11 If it is decided not to proceed with the JV option then Council officers will ensure that the scheme is still delivered as a project within the Regeneration Programme, as the scheme forms an integral and fundamental part of the South Kilburn Regeneration Programme and the homes to be delivered are needed for decant for the existing secure tenants of South Kilburn and the site is a key gateway to the area.

4.0 Financial Implications

- 4.1 Entering this JV provides the Council with an opportunity to generate a return on capital investment which can be reinvested to achieve the Council's overall objective for the wider South Kilburn regeneration programme. However, at the same time, the Council would be exposed to significant risk as the achievement of all returns is dependent on the JV generating profits sufficient to finance them.
- 4.2 The Council would need to set-aside a substantial capital sum to fund a cash contribution, as well as transferring land to the JV and would then not anticipate any return on either of these investments for many years.
- 4.3 A key principle of the JV is that it should be mutually beneficial (i.e. deliver equal financial benefit to both parties). To this end, Council officers are working with counterparts at LN to determine the parameter(s) that should be used to measure 'financial benefit' and to establish what the cash-flows that achieve parity will look like for LN, the Council and the JV itself.
- 4.4 Officers have engaged the services of specialist tax consultants to advise on arrangements for the Council making payments on behalf of the JV and/or transferring assets to JV ownership, so that these can be made as tax efficient as possible for the Council, specifically with respect to VAT and

Stamp Duty Land Tax (SDLT).

5.0 Legal Implications

- 5.1 **Procurement Approach:** The recommendation is to enter into a JV with LN. Leading Counsel's advice has been sought regarding whether an OJEU compliant procurement process is required before entry into such contract. The opinion received is that entry into the joint venture vehicle would not itself entail an OJEU procurement as a competitive procurement in these circumstances is not required by either the Public Contracts Regulations 2015 or the Treaty on the Functioning of the European Union or otherwise.
- 5.2 **State Aid Considerations:** The Council's investment in the operation, and continued involvement in its operation, has the potential to create State aid risk at two levels. Firstly, the private sector partner could be a potential recipient of State aid. Second, the JV itself could be a recipient. To mitigate this risk, the Council's investment in the JV must be made on entirely commercial terms so as to satisfy the legal principle of the Market Economy Investor Principle (MEIP). The MEIP test dictates that where a public sector investor invests on terms which a private sector investor in comparable circumstances would agree to. The MEIP test is automatically satisfied if the private sector investor is investing on a *pari passu* basis. For an investment to be *pari passu*, it must be exactly the same, both in terms of amount, risk and reward. If the JV partner is not investing on a *pari passu* basis, it will still be possible to demonstrate that the MEIP test is met however an independent commercial appraisal on the terms of the Council's investment in the JV will need to be undertaken prior to completion. Further State aid analysis can be provided once the transfer of funds and property into the JV is confirmed.
- 5.3 **Form of the JV:** As stated above, there are reasonable grounds to support the case that the primary purpose of the Council's participation in the corporate JV is the pursuit of socio-economic objectives which are in, overall terms, non-commercial (as more particularly described in paragraph 3.7). Once confirmed, such objectives should remain consistent and clearly reflected in all other documentation produced by or on behalf of the Council in respect of the Project.
- 5.4 It should be noted that the use of an LLP is, however, not entirely without risk as the use of the General Power of Competence pursuant to Section 1 of the Localism Act 2011 in this context is currently untested by the Courts. In the event that the use of such a vehicle is deemed to be ultra vires by a Court, it is also difficult to assess the consequences of such a determination as such projects are often multi-layered and contain a number of stakeholders and interests. However, comfort can be taken from the fact that LLPs have been utilised by a number of local authorities in large scale regeneration schemes, so far as Pinsent Masons are aware, without challenge for the preceding seven to eight years. Further details are given in Pinsent Masons' Legal Options report.

6.0 Property Implications

- 6.1 Council officers have instructed BNPPRE (BNP Paribas Real Estate) to carry out an independent Red Book development valuation and negotiation advice in respect of site 18.
- 6.2 BNPPRE have assessed the development value of the comprehensive redevelopment of the whole site with the benefit of its existing planning permission and also the development value of the Council's land only.
- 6.3 BNPPRE will negotiate with Londonewcastle's surveyor to agree the benchmark and values of both parties' land interests to be included in the proposed joint venture following approval of BNPPRE's valuation by Council officers."

7.0 Equality Implications

- 7.1 It is anticipated that the new scheme will provide high quality residential and commercial premises which will assist in improving the physical characteristics of the neighbourhood and will also help regenerate the area by attracting new retail business.
- 7.2 Currently there are four secure tenants and two leaseholders remaining within Cullen House. Every effort will be made to provide the secure tenants with a suitable alternative accommodation and to reach mutually acceptable agreements with the two leaseholders to buy their properties. When identifying the options and alternatives put forward, the Council should engage with affected residents and leaseholders.
- 7.3 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). Due to the ethnicity profile of the area, full consideration must also be given to 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.

8.0 Staffing/Accommodation Implications (if appropriate)

- 8.1 N/A

Background Papers

Appendix 1 – Site 18 Site Boundary

Appendix 2 – Heads of Terms

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