



Cabinet
19 June 2017

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

For Action

Wards affected:
Kilburn

**Chippenham Gardens, South Kilburn –
To seek approval to use an appropriate Framework or
OJEU process to procure a delivery partner together with
an update on project issues and options**

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 The report relates to Chippenham Gardens, which is a fundamental part of the South Kilburn Regeneration Programme. The Site comprises of 5-9 Chippenham Gardens, Kilburn Park Post Office and 4-26 Stuart Road (even numbers only) together defined as “**Chippenham Gardens**” (see appendix 1 – Existing Site Plan).
- 1.6 This report provides Cabinet with an update on the Chippenham Gardens project and seeks approval for the procurement of a delivery partner and to set rent levels at Homes and Communities Agency Target Rent.
- 1.7 Note the eventual intent to buy out the land owner of 5-9 Chippenham Gardens, Kilburn Park Post Office (see appendix 2).
- 1.8 This report also updates Cabinet on the current position of the negotiations with the remaining leaseholders and the possible need to rely on the exercise of Compulsory Purchase Order (CPO) powers in order to obtain vacant possession.

2 Recommendations

That Members:

- 2.1 Approve the procurement of a delivery partner for the Chippenham Gardens 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 set out in Appendix 3 of this report and evaluating the tenders on the basis of the evaluation criteria set out in Appendix 3.
- 2.2 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 2.1 above for the reasons detailed in paragraph 3.8.
- 2.3 Approve the setting of rent levels for the affordable homes at the Chippenham Gardens site once complete, at a rent equivalent to the H.C.A. Target Rent levels.
- 2.4 Approve in principle the proposal to buy the out the landowner of 5-9 Chippenham Gardens, Kilburn Park Post Office.
- 2.5 To note the possible need to rely on the exercise of CPO powers to obtain vacant possession should an agreement not be reached with the remaining leaseholders and the continuing efforts by officers to reach an amicable agreement with the remaining leaseholders.

3 Detail

Background

- 3.1 The Council's Scheme for the redevelopment of the Chippenham Site has the benefit of full detailed planning permission granted by the Council on 14 July 2016.
- 3.2 The consented scheme will consist of 52 new high quality residential homes which will include 30 dwellings for sale on the open market and 22 social rented homes (for existing secure tenants of South Kilburn) comprising a range of 1 to 3 bedroom flats which consist of 24 x 1 bed, 19 x 2 bed and 9 x 3 bed, which could be subject to change. In addition, the development will provide new public realm, car park spaces, landscaped private and shared gardens and associated highway and other infrastructure.

- 3.3 The current site comprises of a Post Office and a Council residential block comprising of 12 flats. Of these 8 are social rented and 4 have been purchased under Right to Buy ("RTB") legislation. In regard to the social tenants, to date all have already been relocated to alternative accommodation elsewhere within South Kilburn.
- 3.4 Of the 4 leaseholders, one has been acquired by negotiated agreement leaving three leaseholders in occupation. Two are owner-occupiers and one is an investment-owner with the unit let on a private rented basis. The Council's Property team are negotiating to acquire these interests by agreement and these negotiations are ongoing, but the council may have to rely on CPO powers to acquire the interests and obtain possession if the negotiations by agreement are unsuccessful. All leaseholders have been offered a market value and compensation in line with that normally offered under compulsory purchase and for the owner-occupiers an alternative and affordable rehousing solution via a shared equity property or property swap on the South Kilburn Estate.
- 3.5 Woodville Properties Limited ("Woodville"), are the freehold owners of 5-9 Chippenham Gardens and the Kilburn Park Post Office site (together the "Woodville Land"). On 11 November 2013, the Executive delegated authority to the then Strategic Director of Regeneration and Growth in conjunction with the Borough Solicitor and the Chief Finance Officer to enter into a collaboration agreement with Woodville. That collaboration agreement was entered into by the Council and Woodville on 19 December 2014 (the "Collaboration Agreement").
- 3.6 The current tenant of the Kilburn Park Post Office confirmed that they did not want to return to the new development. Consequently he has entered into an agreement to surrender his lease and vacate the site with Woodville. Woodville has recently indicated that they may now be interested in simply disposing of their interest to the Council rather than participate in the Collaboration Agreement. Should the Cabinet approve the option to buy the Woodville Land, officers will seek to negotiate a valuation and terms to buy out their interest, subject to financial appraisal demonstrating that this proposal offers best value to the Council. If terms can be agreed a paper will be brought back to Cabinet at a later date to seek approval for the terms of the proposed buyout.
- 3.7 The Council is currently working through the CPO process for the Chippenham Site, however the Council, will continue and would prefer to seek to acquire the three residential units ahead of this process by mutual agreement.

Delivery Partner

- 3.8 The Council is seeking to engage a Delivery Partner now 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. 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 Council preferred procurement is by means of a mini-competition, using an appropriate framework. Should these frameworks prove not be suitable then the alternative procurement method by means of the Competitive Procedure with Negotiation under the PCR 2015 will be followed.

- 3.9 The current estimated target for a start on site is the First Quarter 2018. The Council's preferred procurement route for the selection of a delivery partner for the Chippenham site is by means of a mini competition using an appropriate framework. The Council is 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.
- 3.10 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, authority to select the appropriate procurement route.
- 3.11 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.

Target Rents

- 3.12 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.
- 3.13 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 rents.
- 3.14 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%

- 3.15 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

- 3.16 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.
- 3.17 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 Chippenham site once complete, at rents equivalent to the HCA Target Rent levels.

4 Financial Implication

- 4.1 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 cost of the procurement process will be paid out of existing budgets.
- 4.4 This report refers to the continuation of the existing programme of leaseholder buybacks, however, this is an existing financial commitment. There are no new financial commitments made. This is because a report will still need to come back to Cabinet to approve a development partner if one has been found that meets the Council's requirements. Similarly, a decision to purchase 5-9 Chippenham Gardens, Kilburn Park Post Office will need to return to Cabinet.

5 Legal Implications

- 5.1 Officers consider that the development of the Chippenham site is best achieved through the use of a development agreement with a third party. As a result of rulings in the European Court of Justice, if 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.
- 5.2 As indicated in paragraph 3.9, 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.
- 5.3 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.
- 5.4 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 paragraph 3.18 above (Standing Order 89) and the inviting of tenders (Standing Order 88).
- 5.5 Once the procurement process has been undertaken under the PCR 2015, officers will report back to the Cabinet in accordance with Contract Standing Orders, explaining the process undertaken in tendering the contracts and recommending award.
- 5.6 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.
- 5.7 As indicated in paragraph 3.4, the Council is seeking to acquire the 3 remaining RTB leasehold properties by negotiation. Where this is not possible however, the intention is to utilise compulsory purchase powers. Section 226 (1) of the Town and Country Planning Act 1990 (TCPA 1990) provides a tool to enable the Council to acquire and assemble land for planning purposes.
- 5.8 The statutory power can be used if the Council believes that it will facilitate the carrying out of the development (as defined by Section 55 of the TCPA 1990 redevelopment or improvement on or in relation to the land being acquired).

- 5.9 The Compulsory purchase order must only be made where there is a compelling case in the public interest in addition the Council should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.
- 5.10 Government policy provides that the Compulsory purchase powers must however be used as a last resort, the Council must demonstrate that it has taken steps to acquire the land and associated rights included in a compulsory purchase order.
- 5.11 The Council may seek to rely upon the Housing Act 1985 Schedule 2 which provides grounds upon which a Court may order possession of premises, provided that suitable alternative accommodation is available. Ground 10A can be utilised to obtain possession where an area which is subject of a redevelopment scheme approved by the Secretary of State and the Landlord intends within a reasonable time of obtaining possession to dispose of the dwelling house in accordance with that scheme.
- 5.12 It is noted that acquiring 5-9 Chippenham Gardens by way of mutual agreement is preferred. Section 227 of the Town and Country Planning Act 1990 provides that the Council may acquire by agreement any land which they require for any purpose for which a local authority would be authorised to acquire under section 226 of the Town and Country Planning Act 1990. This therefore extends to the acquisition of land by agreement for the purpose of development, redevelopment or improvement on or in relation to land.

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 Chippenham 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).

Race / Ethnicity

- 6.4 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

- 6.5 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).
- 6.6 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.
- 6.7 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 is also in the process of recruiting 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
- 6.8 The new accommodation on the Chippenham Site has been designed (10%) have been designed to be wheelchair adaptable dwellings and meet the requirements set out in Part M4 (3) 'wheelchair user dwellings'. All other dwellings across the scheme have been designed to meet the requirements set out in Part M4 (2) 'accessible and adaptable dwellings'.

Socio-economic Disadvantage

- 6.9 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 Chippenham 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 being procured 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 and seek to implement Social Value considerations where permitted.

9 Background Papers

Appendix 1 – Existing Site Plan

Appendix 2 - 5-9 Chippenham Gardens, Kilburn Park Post Office

Appendix 3 – Standing Order 88 & 89

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