



Cabinet
12 February 2018

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

Decision to delegate authority for the award of contract for a delivery partner for Peel Project, and for approval to amend red line and for appropriation for the Peel Site

Wards Affected:	Kilburn
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Part Exempt – Appendix 5 is exempt from publication as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: <i>“Information relating to the financial or business affairs of any particular person (including the authority holding that information)”</i>
No. of Appendices:	6
Background Papers:	None
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1.0 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 2016, 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 This report seeks approval for proposed amendments to the red line boundary for the Peel site. This report also seeks approval to authorise the Strategic Director of Regeneration and Environment in consultation with the Lead Member Regeneration, Growth, Employment and Skills to award a contract for a Delivery Partner for the Peel site within the South Kilburn Regeneration Programme.
- 1.6 This report also seeks authority, subject to the considerations set out below, for the appropriation for planning purposes of the Council-owned land within the Peel site (as shown edged red on the plan at Appendix 1) under section 122 of the Local Government Act 1972. Appropriation is proposed in order to facilitate the redevelopment of the Peel site, for which planning permission was granted on 8 September 2017. Once effected, appropriation would also enable use of the powers in section 203 of the Housing and Planning Act 2016 which override third party rights (such as easements, restrictive covenants and rights of light), thereby facilitating that redevelopment. Accordingly, this report also seeks 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 2) within the Peel site, and to appropriate the whole site ("the Peel Site"), including open space, for planning purposes (the Peel Site is shown edged red on the attached plan – at appendix 1).
- 1.7 For the purposes of this report, Peel Precinct (including the former Robert Peel Public House / former West Kilburn branch of the Royal British Legion); 97-112 Carlton House, Canterbury Terrace; 8-14 Neville Close; 2 Canterbury Road (South Kilburn Studios) & Peel Site Garages, London, NW6 are together defined as "the Peel Site" (or "Peel") which is shown edged red on the plan at appendix 1 (the new red line boundary).

1.8 This report also seeks to reaffirm previous approvals/decisions.

2.0 Recommendation(s)

- 2.1 Cabinet to reaffirm its original approvals given in the resolutions made on 11 November 2013 authorising the making and implementation of a compulsory purchase order ("CPO") to further the redevelopment of the Peel Site (as previously documented under the headings 'Peel Recommendations' and 'CPO Recommendations' at paragraph 16 of the Minutes of the Executive meeting held on 11 November 2013.
- 2.2 Cabinet to reaffirm the previous Executive and Cabinet decisions as detailed in paragraph 3.5 to utilise Ground 10A of the Housing Act 1985 (if approval is given by the Secretary of State) and compulsory purchase powers under section 226(1)(a) of the Town and Country Planning Act 1990 to secure the vacant possession of properties within the Peel.
- 2.3 Cabinet to approve the new red line boundary for the Peel site as shown on the plan at appendix 1.
- 2.4 Cabinet to delegate authority to the Strategic Director of Regeneration and Environment in consultation with the Lead Member Regeneration, Growth, Employment and Skills to award a contract for a Delivery Partner for the Peel site for the reasons detailed in paragraph 3.8 following the OJEU procurement process.
- 2.5 Cabinet to approve the advertisement of the Council's intention to appropriate the open space (shown at appendix 2) in accordance with its powers under section 122 of the Local Government Act 1972 and dispose of open space at the Site to a third party in accordance with the provisions of section 233 of the Town and Country Planning Act 1990.
- 2.6 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.
- 2.7 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 Peel 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.
- 2.8 Cabinet to approve the application to the Secretary of State by the Strategic Director of Regeneration and Environment to seek the Secretary of State's consent under section 19 Housing Act 1985 to appropriate any part of the Site

including any part consisting of a house or part of a house so that the Site is no longer held for the purpose of part II of the Housing Act 1985.

3.0 Detail

- 3.1 The South Kilburn Estate is an amalgam of Council residential blocks from the 1950's and 60's including a number of different post-war social housing typologies in a poorly designed and low quality physical environment. The estate is located in the south of the borough and sits between Kilburn High Road to the east, Queen's Park to the northwest and extends towards Maida Vale in the south. It is the Southern-most part of Brent and shares a boundary with the City of Westminster. It is an area surrounded predominantly by privately-owned terraced Victorian and Edwardian housing that commands high values. The over and underground facilities of Queen's Park and Kilburn Park stations and Kilburn High Road over ground station lie close to the estate's borders.
- 3.2 The estate is the largest concentration of social housing in Brent and amongst the largest in London. Much of the housing suffers from inherent internal design problems and the relationships between buildings, streets and spaces are poor and indeterminate. The area is not amenable for maintenance or improvement and as a whole the estate presents significant management challenges. These physical conditions manifest themselves in some of the highest levels of social and economic exclusion in the borough (which are amongst the highest in the country).

Amendment to the Red Line Plan

- 3.3 Planning Committee resolved to grant planning permission for the Peel site (see appendix 3 – plan showing current red line boundary) on 15 February 2017 with the planning permission granted on 8 September 2017. This was a hybrid planning application.
- 3.4 The current proposals require the re-alignment of Neville Close which requires the utilisation of a small area (approximately 139m²) of land attached to Craik Court, to the west of Neville Close (see the plan at appendix 4). Officers have advised that these works may, in due course, be carried out pursuant to an agreement under section 278 of the Highways Act 1980. However, the current, previously approved CPO red line boundary does not include this part of the site. Following discussions with our external legal advisors, Pinsent Masons, the Council has been advised that the red line boundary for the CPO should be extended to include this area. There have also been very minor amendments to the original CPO red line boundary as a consequence of investigation of the Council's titles, carried out as part of the diligent inquiry which underpins preparatory work when a CPO is contemplated. The new red line boundary, if approved, will be used for the purposes of the CPO and this report in turn seeks reaffirmation of the previous Executive and Cabinet decisions as detailed in the paragraphs below to approve the use of Ground 10A of the Housing Act 1985 (if approval is given by the Secretary of State) and compulsory purchase powers under section 226(1)(a) of the Town and Country Planning Act 1990 to secure the vacant possession of properties within the Peel site.

- 3.5 The Council has approval for possession proceedings based on Ground 10A in relation to the secure tenants and then CPO for all other interests from the following previous Executive and Cabinet resolutions:
- 3.5.1 15 October 2012 - South Kilburn Regeneration Progress Update.
Included that it was resolved:
(xv) that approval be given to proceed with securing vacant possession of the properties within 113 -136 and 97 -112 Carlton House, Peel Precinct (together defined as 'Peel') as identified edged red on Plan D at Appendix 1 and Hereford House and Exeter Court as identified edged red on Plan E at Appendix 1 to the Director's report (together with Peel defined as 'Phase 3') through negotiation and private treaty and then, if necessary, via possession proceedings based on Ground 10A in relation to the secure tenants and then CPO for all other interests
- 3.5.2 11 February 2013 – Amendment to South Kilburn Regeneration Progress Update Report. Included that it was resolved:
(i) that it be noted that the definition of Peel in recommendation 2.15 of the Report to the Executive on 15 October 2012 should not have included 113 to 136 Carlton House (all numbers inclusive) and should have included 8 to 14 Neville Close (all numbers inclusive;
(ii) that approval be given to rescind the decision in the minutes of the meeting of the Executive on 15 October 2012 Clause 8 (xv) as referred to in the paragraph 2.15 of the report to that meeting and to replace it with the following:
(xv) that approval be given to securing vacant possession of the properties within 8 to 14 Neville Close (all numbers inclusive), 97 to 112 Carlton House, Peel Precinct (together defined as "Peel") as identified edged red on Plan D and Hereford House and Exeter Court as identified edged red on Plan E at Appendix 1 (together with Peel defined as "Phase 3") through negotiation and private treaty and then, if necessary, via possession proceedings based on Ground 10A in relation to the secure tenants and then the CPO for all other interests.
- 3.5.3 11 November 2013 South Kilburn Regeneration Progress Update.
Included a series of resolutions including in respect of CPO, Ground 10A and appropriation. Further detail is available in the Executive report and the Executive Summary of Decisions background papers.
- 3.5.4 15 September 2014 – South Kilburn Regeneration Programme.
Included that it was resolved:
(iii) that, having noted and considered the responses to the consultation as set out in Appendix 2 in connection with seeking approval of the Secretary of State for use in seeking possession of the 36 affordable homes which are currently occupied by secure tenants (the 'Peel Homes') under Ground 10A of Schedule 2 to the Housing Act 1985, authority be delegated to the Strategic Director of Regeneration and Growth to seek the Secretary of State's consent pursuant to Part V of Schedule 2 to the Housing Act 1985 to the disposal and development of the Peel Site for the purpose of Ground 10A of Schedule 2 to be used to obtain possession of the Peel Homes;

(iv) that, having noted and considered the responses to the consultation as set out in Appendix 2 in connection with the intention to make a Compulsory Purchase Order (CPO) on the Peel Homes and in connection with the draft Allocation Policy for the Peel Homes, approval be given to the adoption of the Allocation Policy which will apply to the Peel Homes and which includes the proposal to make a CPO on the Peel Homes as well as seeking possession of the Peel Homes, subject to the Secretary of State's consent, under Ground 10A of Schedule 2 to the Housing Act 1985. This Allocation Policy sets out the basis on which replacement homes will be allocated to secure tenants in the Peel Homes and the legal means to be adopted for seeking possession of the Peel Homes through the use of Ground 10A of the Housing Act 1985 (if approval is given by the Secretary of State) and compulsory purchase powers under section 226(1)(a) of the Town and Country Planning Act 1990.

Delivery Partner

- 3.6 At Cabinet on 24 April 2017, Cabinet approved the procurement of a delivery partner for the Peel site through inviting tenders using a Competitive Procedure with Negotiation under the Public Contracts Regulations 2015 on the basis of the pre-tender considerations set out in paragraph 3.18 of that Cabinet report and evaluating the tenders on the basis of the evaluation criteria set out in that paragraph.
- 3.7 The Procurement of the delivery partner is currently underway. The procurement has been a three stage process. The first stage "Prior Information Notice", is a pre-procurement stage which provides the Council with feedback prior to advertising the opportunity in the Official Journal of the European Union, this was issued on the 26 May 2017. The next stage was the "Selection Questionnaire" which was issued on the 21 July 2017. The Council received twelve submissions of which five were taken through to the Invitation to Competitive Procedure with Negotiation stage. Following the Council's verification of the ranking of Initial Tenders, the Council could have at its sole discretion either awarded the Contract to the Bidder with the highest score or asked the three highest ranking Bidders to enter into a round of negotiations. The Council chose to enter into a round of negotiations (which it is currently in). Following these negotiations the Council will invite Final Tenders. The Council shall then award the Contract on the basis of the best and final offers received using the evaluation criteria agreed by Cabinet on 24 April 2017. Confidential appendix 5 includes details of the remaining three bidders. The preferred bidder is expected to be selected in April 2018, and following internal approvals between April to June 2018, the Council would expect to award the contract no later than June 2018.
- 3.8 The Council is seeking delegated authority at this time, as due to the pre-election period a decision would otherwise not be able to be taken until June 2018 at the earliest.
- 3.9 The current estimated timescales for delivery from start on site are:

Phase 1: July 2018 – December 2019

Phase 2 & 3: January 2020 to November 2021

This is a slip from the previous reported estimated timescales of:

Phase 1: April 2018 – September 2019

Phase 2 & 3: September 2019 – July 2021

- 3.10 The current site comprises of 56 residential units, 36 of which are deemed social rent units and 20 owner occupier/leaseholder units. There are 16 commercial properties along with the former Robert Peel Public House / former West Kilburn branch of the Royal British Legion and the temporary South Kilburn Studios. To date there remain 22 social tenanted properties who will be offered the opportunity to move into the new affordable (social rent) units on the Peel site if they are still on the Peel site at that time. Also there are seven owner occupier/leaseholder properties. (In the interim, as properties became vacant the Council did let these out on temporary licence to homeless families to provide short term accommodation; these families are now in the process of being moved to other temporary accommodation to ensure a vacant site). The Council's Property team are negotiating to acquire the remaining seven residential leasehold properties and acquire/gain vacant possession of 5 commercial units. All residential owner occupier leaseholders have been offered the opportunity to acquire a shared equity/shared ownership property on the South Kilburn Estate. One leaseholder has taken up this opportunity.
- 3.11 Of the commercial units, there are three properties which are still to be acquired with a long lease and two others where arrangements to vacate the premises are being made. The Peel Precinct Surgery at 3 and 4 Peel Precinct (Dr. Shaikh GP) as one of the three identified GP practices to move into the new health centre is due to be relocated to Carlton Hall (Brent Council is supporting this process). The South Kilburn Trust has vacated Carlton Hall and the Council has instructed a quantity surveyor to manage the process of refurbishing Carlton Hall into a GP practice. At the same time the property team is progressing legal proceedings to ensure that vacant possession of 3 and 4 Peel Precinct is received should the proposed move to Carlton Hall fail for whatever reason. The small businesses who are currently occupying South Kilburn Studios are due to be able to move to the Granville Centre in March 2018. The remaining retail units are either vacant or being used for short term purposes which aids the wider regeneration of the South Kilburn estate, for example Network Homes are currently utilising a unit in connection with the new Kilburn Quarter development on the former Bronte and Fielding Houses site.

Appropriation

- 3.12 Section 122 (2A) of the Local Government Act 1972 provides that prior to the appropriation of any land consisting or forming part of an open space, the Council must advertise its intention to appropriate the open space and must consider any representations or objections made by the public in response to the advert. Accordingly, the Council is required to advertise its intention to appropriate the open space for two consecutive weeks in a local newspaper circulating in the area in which the land is situated.

- 3.13 Following the advertisement of the Council's intention over two consecutive weeks there will be a two week period for consultation during which the public may make and submit representations (objections) to the Council. 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 subsequent disposal) of the open space should occur, having first taken into consideration the representations made in response to the advertisement and consultation, together with consideration of the matters set out in the paragraph below.
- 3.14 In considering whether or not the Council-owned land within the Peel Site should be appropriated for planning purposes (and potentially disposed of subsequently in connection with such planning purposes), thereafter engaging the powers conferred by section 203 of the Housing and Planning Act 2016, the Strategic Director of Regeneration and Environment, in consultation with the Lead Member for Regeneration, Growth, Employment and Skills will consider:
- whether the land which is to be appropriated is already owned by the Council (this is a prerequisite to appropriation);
 - whether the land which is to be appropriated is no longer required by the Council for the purpose for which it is currently held (again, this is a prerequisite to appropriation);
 - whether the purpose for which the Council would be appropriating the land is a purpose authorised by statute (in the case of land to be appropriated for planning purposes, the relevant purposes would be authorised by sections 226 and 227 of the Town and Country Planning Act 1990);
 - whether the proposed redevelopment of the Peel site would be in the public interest;
 - whether the public interest benefits which would arise from the redevelopment of the Peel site would be sufficient to justify interference with any private rights, such that the interference was proportionate;
 - whether the Council could (in the alternative) acquire the land compulsorily for the purposes of the redevelopment;
 - whether any related financial liabilities of the Council would be indemnified; and
 - whether prior consultation had taken place (as outlined above).
- 3.15 Appropriation of the whole Site for planning purposes would facilitate the carrying out of the development. There is a compelling case in the public interest to appropriate the Peel Site (including the open space) for planning purposes, as developing the Site would serve the public interest by providing new and improved housing and community facilities and accordingly, such development outweighs the effect of the appropriation on the private rights of individuals. In addition, the carrying out of the proposed redevelopment, regeneration and improvement of land within the Peel site (in accordance with the planning permission granted on 8 September 2017) will ultimately contribute to the promotion and improvement of the economic and social well-being of the Council's area – and these benefits could not be realised within a reasonable timescale (in the context of the Council's comprehensive South

Kilburn Regeneration Programme) without interference with the private (third party) rights affected by the appropriation.

- 3.16 If a third party is able to establish that it has an easement or a right over the Peel Site or over a part of the Peel Site (such easements could include but are not limited to a right of way or a right to light) then the third party could potentially obstruct the redevelopment and regeneration of the Site by applying for an injunction to prevent the delivery of the development. The effect of appropriation, followed by the engagement of the powers in section 203 of the Housing and Planning Act 2016 which override such third party rights that may exist within the Peel Site and convert them into a right to compensation only (as opposed to a right to apply for an injunction), is therefore to facilitate the re-development and improvement of the Site. It should be noted that third parties may be entitled to compensation for loss of their rights. Such compensation would be awarded for injurious affection (compensating for any depreciation in the value of the land or property arising from the interference with the right) rather than on a reinstatement or ransom basis.
- 3.17 Under the Agreement for Lease and Development (to be entered into by the Council and its delivery partner in due course) the Council would agree to appropriate its interest in the Site for planning purposes. The Agreement for Lease and Development would include provisions requiring the delivery partner to indemnify the Council in relation to any claims for compensation arising from any interference with third party rights in connection with the Council's appropriation and disposal of land under, respectively, section 122 of the Local Government Act 1972 and section 233 of the Town and Country Planning Act 1990, or arising from the subsequent and related exercise of the powers under section 203 of the Housing and Planning Act 2016.

4.0 Financial Implications

- 4.1 The financial model for the South Kilburn regeneration programme seeks to be self-financing within the funding envelope generated from land sales which are ring-fenced. All the capital receipts generated are reinvested back into the South Kilburn regeneration programme which enables the rolling regeneration programme to continue to deliver much needed new homes to help meet the Council's housing delivery target.
- 4.2 This particular scheme in itself was envisaged that it may not be self-financing due to the inclusion of a health centre to be delivered by the selected developer. However officers have worked to produce a procurement package which would be appealing to the market, and in addition, if necessary, other schemes within the South Kilburn Programme are anticipated to offset any additional cost whilst external funding is also being pursued.
- 4.3 The South Kilburn model has traditionally worked through a process of the Council obtaining planning consent for a particular site, this site is then marketed to suitable delivery partners, who offer a land receipt plus potential overage in return for a long leasehold interest. The developers base their bids on the value they believe will be generated from private sales which should also cover the cost of the affordable homes required to be built on site.

Consequently in return for the site, the delivery partner will build much needed affordable and social housing, while also delivering capital receipts to support the capital programme.

- 4.4 Estimated total project cost for the redevelopment of the Peel site is £11.17m, of which £5.4m spent prior to 2017/18. A budget of £5.6m is allocated for the Peel project between 2017/18 and 2019/20.
- 4.5 The anticipated capital receipt for the Peel redevelopment site is expected to cover the costs of bringing this site to market which, if achieved, would have a positive impact on the overall cash-flow of the South Kilburn Programme. The actual sum to be received will be determined via the on-going negotiations
- 4.6 There will be minor costs associated with the appropriation in respect of the advertisement costs. Not doing the consultation would prevent appropriating the land, putting the entire project taking place at risk.
- 4.7 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 Agreement for Lease and Development in respect of any such claims.

5.0 Legal Implications

- 5.1 Officers consider that the development of the Peel 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 where there is a requirement as to the development to be constructed, it needs to undertake some form of procurement process which is compliant with EU law in order to identify a partner to carry out the development.
- 5.2 As approved by Cabinet on 24 April 2017, the intention is to identify a delivery partner through inviting tenders using the Competitive Procedure with Negotiation pursuant to the Public Contracts Regulations 2015 (the “PCR 2015”).
- 5.3 The estimated value of this proposed procurement over its lifetime is higher than the EU threshold for Works and the procurement of the contract is therefore governed in full by the PCR 2015.
- 5.4 The estimated value of the procurement is in excess of £5m and therefore it will be classed as a High Value Contract under Contract Standing Orders and accordingly Cabinet approval to the award is required. For the reasons detailed in paragraph 3.8 however, Cabinet approval is sought to delegate authority to award the development agreement and lease to the Strategic Director of Regeneration and Environment in consultation with the Lead Member Regeneration, Growth, Employment and Skills once the most economically advantageous tender has been identified.
- 5.5 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.

- 5.6 Cabinet is advised that section 122 of the Local Government Act 1972 provides that a Council may appropriate land within its ownership from one purpose to another provided that immediately before the appropriation the land is no longer required for the purpose for which it is held and provided that the purpose for which the land is to be appropriated is one for which the Council is authorised to acquire land by agreement. In the case of the Peel Site, the effect of the Council's proposals to regenerate the South Kilburn estate is such that the land within the Peel Site is no longer required for its current purpose. However, the land is needed for the purpose of the Council's regeneration proposals for the Peel Site, in relation to which the acquisition of interests in land by agreement could be authorised by section 227 of the Town and Country Planning Act 1990.
- 5.7 S122(2A) of the Local Government Act 1972 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 in a newspaper circulating in the vicinity of the open space land which is proposed to be appropriated and consider the representations made by the public in response to that advertisement. S123(2A) also imposes a similar requirement to advertise the intention to dispose of open space (again for two consecutive weeks in a local newspaper) and consider the representations made by the public.
- 5.8 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 conditions 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 of any buildings or works appearing to be needed for the proper planning of the Council's area. 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.
- 5.9 Provided that the land is validly appropriated then under section 203 of the Housing and Planning Act 2016 the private rights or interests of third parties will be overridden (and converted into a right to claim compensation), 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 is for a purpose related to the purpose for which the land was acquired, vested or appropriated, and that purpose must be in the public interest.

- 5.10 Using section 203 to override easements such as rights to light, rights of way and restrictive covenants, allows the construction or maintenance work to be carried out even if it interferes with such a right; compensation (for injurious affection) will need to be paid to the parties whose rights have been interfered with.
- 5.11 Prior to development however it is prudent to make enquiries to ascertain 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.
- 5.12 The benefit of the power to override such third party rights can be enjoyed by those deriving title from the Council. Accordingly, if, following the appropriation, the Council disposes of the land, transferring it to a developer, the power to override third party rights will operate when the development is commenced by that developer in accordance with the planning permission (as granted on 8 September 2017).
- 5.13 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.

6.0 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 Peel site, the secure tenants who are on the Peel site at the time the new units are complete 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 The public sector equality duty requires public bodies to pay due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
 - Advance equality of opportunity between people who share a protected characteristic and those who do not;
 - Foster good relations between people who share a protected characteristic and those who do not.
- 6.4 The Equality Act 2010 and the Public Sector Equality Duty (outlined above) cover the following nine protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation.

- 6.5 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, socioeconomic status (lone parents and large families).

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 tenants 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 These groups maybe more likely to access GP facilities. There will not be a break in the delivery of a GP facility. The current GP on the Peel site is due to move to a nearby location - Carlton Hall - until the new Health Centre is built. The Peel site GP is envisaged to then move into the new facility.
- 6.8 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).
- 6.9 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.
- 6.10 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/shared-ownership 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/dependent children responsibilities. The Council has recruited an estate regeneration leasehold liaison officer who is liaising with all leaseholders providing support and guidance as to the options available to relocate or sell their property
- 6.11 The new accommodation on the Peel has been designed with the needs of the current secure tenants in mind and occupational therapy adaptation will be put in as required for secure tenants. Across the 226 units, 23 dwellings (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

- 6.12 Local services on the Peel site will cease during the redevelopment, with some functions not returning. There will still be provision of a general store for day to day goods and a GP practice in walking distance of the Peel Site throughout the redevelopment, and there will be a new health centre with improved facilities to that currently on site delivered as part of the redevelopment, along with commercial/retail. A new proposed pharmacy on the Peel site is likely to improve service for vulnerable groups of people as one is not currently on the Peel site. Those services which are not returning to the Peel site or available nearby are not deemed critical for day to day living.
- 6.13 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.
- 6.14 All residents of South Kilburn will be able to benefit from the new Health Centre, Commercial/Retail offer and highways and public realm improvements. The residents of 65 to 96 Carlton House will also have access to the new private amenity space behind Blocks D and E, there will also be limited parking provision made available which will be given to the Housing Department to decide on how to allocate (intended for 65-96 Carlton House).
- 6.15 This report seeks Cabinet approval to advertise the Council's intention to appropriate and thereafter dispose of open space at the Peel Site, and to appropriate the whole site including open space for planning purposes. The appropriation is not altering (with the exception of the extension of the red line boundary) existing plans for the site, but is a statutory process required in the context of the Council's land use planning functions.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 The paper will be circulated to ward members
- 7.2 There have been a number of consultation events for the Peel site as part of the process to submit a scheme to planning

8.0 Human Resources/Property Implications (if appropriate)

- 8.1 There are no specific implications for Council staff or accommodation associated with the proposals contained in this report.
- 8.2 There are property implications in terms of properties which are still to be acquired and vacant possession to be gained, this is outlined in section 3. The site shown in appendix 6 will be sold under a long lease to a Delivery Partner.

9.0 Public Services (Social Value) Act 2012

- 9.1 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 procurement.

- 9.2 The services being procured aim to improve the economic, social and environmental well-being of residents of South Kilburn through the disposal of the Peel site. The new homes will improve living conditions of residents of South Kilburn. The draft S106 agreement has an Employment and Training schedule which includes that the Developer covenants with the Council in respect of the construction of the Development (but not in respect of any demolition or piling works):

(i) prior to a Material Start (excluding demolition or piling), to inform in writing Brent Works of the projected amount of construction jobs, training opportunities and provide a copy of the Schedule of Works;

(ii) prior to a Material Start, to prepare and submit for the Council’s approval an Employment and Training Plan;

The Employment and Training Plan is a written plan approved by the Council for the provision of training, skills and employment initiatives for residents of the Borough relating to the construction of the Development

- 9.3 The development will also deliver a new Health Centre, with flexible first floor space, 3no A-class retail units at ground floor, highways and public realm improvements (including new public space) available to all South Kilburn residents.
- 9.4 Officers also have regard to the Social Value Act in its procurement of a delivery partner. Within the evaluation, 10% of the score is for social value. Bidders are asked to express what they will offer as part of the contract, outlining firm commitments using the Social Value Action Plan and by submitting a Social Value Statement. Commitments will be included in the contract for the winning bidder.

Report sign off:

AMAR DAVE

Strategic Director of Regeneration and Environment