



**Executive
17 November 2008**

**Report from the Director of
Policy and Regeneration**

Wards Affected:
Kilburn, Queens Park

South Kilburn Neighbourhood Trust

Forward Plan Ref: PRU-08/09-14

1.0 Summary

- 1.1 This report makes proposals to set up a “legacy body” for the South Kilburn NDC, the South Kilburn Neighbourhood Trust (SKNT), and outlines the potential benefits this organisation could bring to the both the current and future regeneration of the South Kilburn area.
- 1.2 The New Deal for Communities programme and related funding stream finishes in 2010/11 but the current evidence suggests that, despite progress on some indicators, South Kilburn will still be one of the most deprived areas of The Borough as measured by the Index of Multiple Deprivation.
- 1.3 The delivery of the housing master plan for South Kilburn has been delayed as a result of the “credit crunch” and the strategy is currently being reviewed. An on-going social and economic regeneration strategy is necessary to support the future housing programme in order to achieve transformational change in South Kilburn not just a change to the physical environment.
- 1.4 The NDC has a capital budget of £3m this financial year and there is a risk that following the National mid year review of NDC expenditure this money could be “clawed back” if not spent by March 31st 2009. The South Kilburn Neighbourhood Trust as an independently constituted body could, subject to Government Office for London approval, play a significant role in safeguarding this funding.

2.0 Recommendations

- 2.1 The Executive approve in principle to establish a new South Kilburn Neighbourhood Trust (SKNT).
- 2.2 To be constituted as a Charitable Co. Ltd by guarantee (or such alternative type of body as determined by officers).
- 2.3 A further report be submitted to the Executive meeting in December to approve the detailed arrangements for the establishment of the body including the specific relationships between the new Trust, the South Kilburn Partnership Board and the Council.

3. Detail

The Need for a Successor Body in South Kilburn

- 3.1 South Kilburn has been the subject of an ongoing regeneration and investment programme since 2001 under the government's New Deal for Communities (NDC) programme. Over the 10 year life of the programme some £50m of ring-fenced government grant will have been spent within the regeneration area, split between capital and revenue funding.
- 3.2 Notwithstanding this South Kilburn remains the most deprived part of the Borough, and there is little realistic prospect of this changing before the NDC programme comes to its official end in 2 years time. There are a number of factors behind this, including the failure to date to find a viable solution to the physical regeneration of the area, the deep and entrenched nature of many of the social issues affecting South Kilburn, the prevailing economic conditions, and the limited impact of some, but by no means all, strands of the NDC programme.
- 3.3 Ongoing investment in the successful regeneration of South Kilburn is an absolute necessity. The success of any future housing programme is dependent on South Kilburn being an attractive place to live and not exhibiting characteristics of multiple deprivation. One clear way of securing ongoing investment is to spend a proportion of the existing NDC grant funding in such a way that a return is achieved which can then be used to resource future regeneration activity. A critical element of this would involve the use of NDC capital resources to purchase land and/or develop property which would in turn realise an ongoing revenue stream through its rental value which can be re-invested in socio-economic regeneration measures.
- 3.4 This is a model which is favoured and supported by government, both through existing and emerging NDC guidance. There are a number of different options, structures or models for achieving this investment, but the government will be particularly keen to see a model which gives the maximum certainty that the NDC funding invested will be ring fenced to South Kilburn in the future. They will expect a model which retains a degree of local community influence and control. All of this points towards establishing a new organisation with clear objects and

articles, which will be able to play a significant role in protecting and enhancing the substantial housing investment which will be made over the next 10-15 years.

What will the Successor Body do?

- 3.5 South Kilburn NDC is currently embarking on the production of a 15 year strategy for the area, which will bring together delivery outcomes for the ongoing physical, economic and social regeneration of the area. The strategy will be supported by an action plan detailing the ongoing interventions which will need to be made in the area. This strategy will be the subject of extensive community engagement, and will be approved by the new South Kilburn Partnership Board as well as the Council's Executive.
- 3.6 The new successor body will be an essential tool in generating funding to deliver this strategy. In addition to revenue streams generated from assets within its ownership, the successor body – particularly if constituted as a charity – will have access to grant funding that the Council and its partners are unable to access – eg. from lottery sources, and charitable foundations.
- 3.7 In the short and medium term therefore the successor body will need to acquire assets from which a return can be made. In the longer term the body will need to allocate resources in line with the agreed strategic priorities for the regeneration of South Kilburn.

The Timing of a New Successor Body

- 3.8 The proposal is to establish a new successor body as soon as practically possible. There are a number of drivers for this:
- (i) The remaining NDC Capital budget is £7.73m. This must be spent in its entirety by March 31st 2011. £3m is allocated in the 2008/09 delivery plan and approved budget. This money must be spent by 31st March 2009. Failure to spend the money within this time period, in a way which is regarded as acceptable to the government (who will need to approve the expenditure) will result in the allocation being lost to the South Kilburn programme and potentially will risk a review of the residual capital allocation for the remaining two years.
 - (ii) Establishing a successor vehicle, with the capacity to purchase assets and 'ring fence' future returns to South Kilburn will be a critical statement of intent to government. Whilst the tight timescales mean that the initial capital expenditure might need to be made in advance of the new vehicle being established, and thus by the Council, it will be possible to caveat the expenditure in such a way that the assets acquired would be handed over to the new successor vehicle at the appropriate time.
 - (iii) There are a number of investment opportunities to acquire strategic sites now which would support the housing and social infrastructure development programme. Specifically they could make a critical contribution to maintaining an ongoing momentum in relation to physical

development in the area, thus building community confidence, and also allow for the early provision of decant accommodation to help bring forward further residential regeneration in the medium term. The specific opportunities are set out in paragraph 3.10 below.

- 3.9 Any delay in making a decision on a future successor body will reduce the government's confidence in our ability to spend the outstanding capital funding in a way which maximises benefits to South Kilburn. It will also risk losing the opportunity to invest in sites in South Kilburn precisely at a time when the Council needs to take more of a pro-active approach to physical regeneration if it is to move the overall scheme forward. Additionally, current land values are very favourable for purchase.

Potential NDC Capital Expenditure

- 3.10 A number of potential opportunities for capital expenditure within this financial year have been identified, all of which may benefit from an "intermediary organisation" in terms of maximising future re-investment opportunities. An urgent meeting has been requested with government to explore the respective merits of each opportunity. There are of course likely to be further opportunities for similar expenditure in future years, as the position with regard to the delivery of the housing programme becomes clearer.

- (i) *Acquisition of the site for a Healthy Living Centre.* The site is currently occupied by the NDC offices, and owned by the Council. It is identified in the South Kilburn Master Plan for health uses, and there is support from the relevant stakeholders to make progress on this development. There are a number of procurement options, with the most likely route will be through a specialist developer who has been working with the local GPs to find a site and develop it. The successor body could acquire the site from the Council and grant a long lease to the developer in return for a lease premium and annual ground rent. This income stream would in turn support future regeneration activity in South Kilburn.
- (ii) *Acquisition of Albert Road day centre site to facilitate re-location.* The Albert Road Day Centre is located within Zone 11 of the masterplan, which has been identified within the phasing plan as an early site for the delivery of new housing. There is an opportunity for the successor body to acquire the Day Centre site for future onward sale and development, with the twin benefits of providing a resource to relocate the Day Centre elsewhere in the Borough and subsequently providing a vacant development site in South Kilburn.
- (iii) *Acquisition of garage site on Peel Precinct and land assembly to include garages and No.58 to create a viable site for housing.* This site is currently owned by a private developer who is having difficulty providing the numbers of larger affordable units that are required. It would be easier to deliver a scheme on this site if it could be funded primarily through Social Housing Grant at some point in the future. A successor body could acquire

the garage site and co-ordinate the necessary site assembly to deliver a more comprehensive scheme incorporating part of Peel Precinct.

(iv) *Further sites in private ownership.* There are other sites in the South Kilburn master plan area which subject to further investigation may be suitable for housing which may attract Social Housing Grant.

(v) *Sports hall joint use with St Augustine school.* A report will be presented to the December Executive with regard to the possibility of delivering new sports facilities in South Kilburn, in partnership with St Augustine's School and Westminster City Council. Subject to executive approval, this facility may require a small on-going revenue subsidy to support community use and the SKNT could provide funding as required beyond the NDC programme.

3.11 These projects are illustrative and would need to be worked up in more detail but they would enable the NDC to spend its capital allocation in a way that adds value to the longer term redevelopment of the area and they would also realise a return that could contribute to future regeneration activity in South Kilburn. Even if sites (ii), (iii) or (iv) were acquired by the Council (in order to utilise the £3m funding by 31 March 2009), the existence of a successor body (to whom the sites could subsequently be transferred) will reassure DCLG that such acquisition is an appropriate way of expending NDC funding.

Options for a Successor Body

3.12 There are four basic options for a successor body in South Kilburn, that will ensure that the ongoing physical regeneration is supported by social, economic and community interventions:

- (i) Do nothing option
- (ii) The new South Kilburn Partnership Board
- (iii) A new successor body – eg. a South Kilburn Neighbourhood Trust
- (iv) The existing South Kilburn Company Limited

3.13 The 'do nothing' option would require the Council to take responsibility for both the outstanding capital expenditure and the ongoing 'legacy' arrangements for the social regeneration of the area.

3.14 In theory there is nothing stopping the Council from directly spending the NDC capital grant in the same way that it effectively spends all NDC resources at present. However, given the level of expenditure for each capital project, all expenditure will need to be approved by government. In these circumstances the Council will need to convince the government that it will re-invest any return from the assets into South Kilburn in order to demonstrate maximum value for money. Without a specific successor body this will be harder to demonstrate, especially over a 15 year lifetime, and provides the government with no hard and fast guarantees. In effect it will be more difficult for the Council to recycle capital receipts in the same way and with the same flexibility, and to ensuring that the

proceeds were spent in South Kilburn rather than other parts of the Borough. On the positive side though, the Council VAT exemptions would apply.

- 3.15 With regard to ensuring an ongoing legacy programme following the end of the NDC revenue grant, it is difficult to see where the Council will support this from. All existing resources within South Kilburn are paid for through the NDC grant regime. There is unlikely to be any future government programmes of the scale of NDC, and indeed only last year the government also discontinued its Neighbourhood Renewal Fund. It remains to be seen what the governments or the mayor's future investment approach to regeneration is, but there are no obvious suitable grant funding programmes on the horizon. Therefore this option would require the Council to find ongoing revenue resources to support South Kilburn regeneration if it is to remain a priority.
- 3.16 The second option would be for the new South Kilburn Partnership Board to act as the successor body. The Partnership Board is an unincorporated body though, and therefore is unable to hold assets or directly purchase services. To all intents and purposes this option is the equivalent of the Council acting as a successor body, with the exception that a degree of decision making has effectively been delegated to the Partnership Board. The Partnership Board however could provide a very useful link between the wider community, key partners (including the Council) and any new legacy vehicle.
- 3.17 The third option is to establish a new succession vehicle. There are a number of 'product' options that could be considered. The NDC have commissioned some initial advice from Anthony Collins solicitors, a legal firm with considerable experience of advising NDC programmes on legacy issues, who have recommended that a Charitable Company Limited by Guarantee would be the most appropriate option for South Kilburn.
- 3.18 A new Charitable Company would provide comfort to the government that any proceeds from assets purchased through the use of NDC capital resources would be recycled back into South Kilburn, thus maximising value for money. It would have the advantages of being exempt from both Stamp Duty Land Tax and Capital Gains Tax, although expenditure would be subject to VAT.
- 3.19 A new Charitable Company would comply with government guidance and best practice in relation to succession and legacy arrangements for NDC programmes. It would allow the community to remain closely involved in the ongoing regeneration of South Kilburn, and by virtue of its charitable status would be eligible for a range of additional funding streams that the Council is unable to access – including lottery funding and funding from charitable institutions.
- 3.20 Successful Charitable Company have very clear objects and articles, and if this is the favoured option it is proposed that a further report be considered by the December Executive setting these out. Further consideration would also need to be given to detailed issues such as directors, the relationship to the South Kilburn Partnership Board, and the relationship with the Council.

- 3.21 The final option is to re-invigorate the dormant SKNDC Company Limited. The company has never traded and is in the process of being wound up. There has been a step change in the performance and governance arrangements at the NDC since the Company Limited was first considered and established, and therefore it is proposed that the best course of action would be to continue to wind up the company.

The Preferred Option

- 3.22 In effect there is a straightforward choice for moving forward between the Council maintaining direct responsibility for regeneration in South Kilburn, with no identified resources at this point in time (options 1 and ii) or the establishment of a new successor body – most likely a charitable company (option iii).
- 3.23 The charitable company has the clear advantages of fitting in with government guidance and good practice, re-assuring government that all proceeds of capital investment will be invested back into South Kilburn, and having the potential to provide an ongoing revenue stream to ensure that the physical regeneration that will take place in South Kilburn over the next 15 years will be supported by a social, economic and community regeneration programme – albeit one that will be more modest than the current NDC programme.
- 3.24 Government guidance sets out that there are three possible types of body which could constitute a successor body:
- (a) A charitable company limited by guarantee;
 - (b) A community interest company limited by guarantee;
 - (c) A community benefit type industrial and provident society with an “asset lock”.
- 3.25 A key issue for DCLG (and indeed for the Council) is to ensure that any funding, or land, that it provides to a successor body, is definitely used for regeneration of the South Kilburn area and not for any other purposes. DCLG accept that options (a) or (b) are sufficient in themselves to achieve this. With option (c) when the society is set up a rule needs to be imposed to ensure that assets are not used for other purposes (i.e. to “lock them in”).
- 3.26 There are a number of areas of detail that will need to be worked through further though, to provide the re-assurance that the Council will remain a leading and influential player in the future regeneration programme. Detailed Memorandum and Articles would need to be drawn up and approved by the Executive, directors would need to be identified, the relationship with the South Kilburn Partnership Board would need to be clearly defined, and the proposed future expenditure would need to be aligned to the Council’s own regeneration strategy and action plan. If the Executive approves the recommendations of this report, a further report will need to be forthcoming in December 2008 providing full details on all of these issues.
- 3.27 There is a very real prospect that a Charitable Company might not be established in time for it to spend this year’s NDC capital allocation. In these circumstances the Council will need to spend the allocation on behalf of the Company, and hold

any assets acquired for transfer to the Company once it is established. This will require approval from the government prior to expenditure, and Secretary of State approval to transfer any assets will also subsequently be required.

4.0 Financial Implications

- 4.1 The costs required to set up the South Kilburn Neighbourhood Trust will be met by the NDC budget which has an allocation for the succession strategy. The NDC has already commissioned and paid for the draft Memorandum and Articles for the Charitable Co. and the remaining set up costs relating to further advice and securing Charitable status are likely to be less than £5k.
- 4.2 There are potentially a number of financial implications relating to the operation of the SKNT and individual transactions that it makes. The Charitable Company will have Council representation on its board but it will not be a local authority “controlled” or “influenced” Co. and its transactions will be off the Council’s balance sheet. As a limited Company it will manage its own risks and these risks will not be passed to the Council in any circumstances.

5.0 Legal Implications

- 5.1 Under section 2 of the Local Government Act 2000, the Council has the power to do anything which is likely to promote or improve the economic, social or environmental wellbeing of the whole or any part of its area. It is considered that the establishment of the successor body would fall within this power. In exercising this power, the Council has to have regard to its Community Plan. A critical role of any successor body will be to align the resources it generates with the priorities set out in the Community Plan, in particular focussing on employment, health and well being, a safe place and a lively place.
- 5.2 The Council has the power under section 123 of the Local Government Act 1972 to dispose of any land that it owns. Accordingly, it has the power to transfer land to the successor body if so desired. However, where the disposal is a transfer of the freehold or grant of a lease for more than 7 years, the Council must obtain the best consideration that is reasonably obtainable unless the consent of the Secretary of State is obtained. The Secretary of State has issued a general consent which allows local authorities to dispose of a property without obtaining his or her specific consent, where the Council is of the opinion that the disposal will help to secure the promotion or improvement of the economic, social or environmental wellbeing of their area and the difference between the price paid to the Council and the open market value of the land does not exceed £2million. Again, regard must be had to the Community Plan if appropriate. Accordingly, if the Council wished to transfer land to the successor body at below market value it would either have to comply with this general consent or obtain the Secretary of State’s specific consent.

6.0 Diversity Implications

6.1 The South Kilburn neighborhood has a diverse population and includes some of the most deprived Wards in The Borough; the reason for the designation of an NDC in the area. The proposals in this report are designed to put arrangements in place that can maximize the immediate benefits to the community from NDC funding and continue the social, economic and community regeneration of South Kilburn after the NDC programme ends in 2010/11.

7.0 Staffing/Accommodation Implications (if appropriate)

7.1 None specific arising out of the recommendations of this report.

Background Papers

South Kilburn NDC Delivery Plan

Draft Memorandum and Articles with covering report from Anthony Collins and Partners.

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