

	Cabinet 9 November 2020
	Report from Strategic Director of Regeneration and Environment
South Kilburn Regeneration Programme – making of compulsory purchase order	

Wards Affected:	Kilburn
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt:	Part Exempt – Appendix 2 is exempt as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: “Information relating to the financial or business affairs of any particular person (including the authority holding that information)”
No. of Appendices:	Three: Appendix 1: Proposed Order Lands Appendix 2: Purchase of Bluebox (<i>Contains exempt information</i>) Appendix 3: Tenant and leaseholder policy
Background Papers:	None
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1.0 Purpose of the Report

- 1.1 The South Kilburn Programme is a 15-year programme that is almost half way through to completion. It aims to transform the area into a sustainable and mixed neighbourhood and create a real sense of place and belonging. The Masterplan aims to deliver 2,400 new high quality homes of which around 1,400

will be made available to existing South Kilburn secure tenants, a new larger high quality urban park and improved public realm, a new primary school and health facilities, new retail facilities and improved environmental standards and site-wide energy solutions.

- 1.2 The Cabinet is asked to authorise the making of a compulsory purchase order (“CPO”) as necessary for each phase in order to progress the South Kilburn Regeneration Programme (the “Scheme”). A CPO will ensure that vacant possession of land required within the South Kilburn estate (“Estate”) for the Scheme can be secured should the Council fail to reach a negotiated settlement, which is the Council’s preferred option, for the purchase of the outstanding leasehold interests.
- 1.3 The Council held a residents’ ballot in South Kilburn in autumn 2019 to make sure that the community continued to support the award-winning regeneration of the Estate; 72% of residents took part in the vote and 84% of residents supported the Council’s plans to rebuild the neighbourhood, which will be in accordance with the South Kilburn Masterplan and programme.
- 1.4 The Cabinet is asked to note that the adoption of the recommendations in this report does not necessarily mean that a CPO will be used to enable delivery of the phases within the Scheme. The Council has an excellent record of accomplishment in acquiring leasehold interests by negotiated agreement. Approximately 98% of all leasehold interests required for the Scheme so far have been successfully acquired by negotiated agreement, without the use of a CPO.
- 1.5 The Council will seek to reach a negotiated settlement with leaseholders whose interests are required to deliver the remainder of the Scheme according to the phasing and planned delivery of new homes. Settlement of compensation will be in accordance with the Tenant and Leaseholder policy shown in Appendix 3 and will typically include market value, and loss and disturbance payments at the relevant point in the process. The making of a CPO will be a last resort. The authority given in this report will assist the Council by making it clear to all landowners that the Council is committed to delivering the Scheme and is willing to use a CPO - if absolutely required.
- 1.6 The report also seeks authority to purchase (either by negotiation or by CPO) a high value leasehold interest at Exeter Court, Granville Road, London NW6 5AJ, which is a basement car park converted into a self-storage facility. Fulton Holdings Ltd, trading as Blue Box Storage, owns the premises. The interest is required to secure vacant possession of Exeter Court and which is necessary to deliver the Hereford and Exeter Court scheme (appendix 2).
- 1.7 To seek approval of two solutions to aid the leaseholder acquisitions process
a) shared equity and b) the offer of a council tenancy.

2.0 Recommendation(s)

- 2.1 Cabinet is asked to:

- 2.2 Authorise the use of CPO powers for the Scheme and delegate authority to the Strategic Director of Regeneration and Environment, in consultation with the Lead Member for Regeneration, Property and Planning to proceed with the making and implementation of a CPO for each phase of the Scheme as necessary. The proposed order lands are indicatively shown in the plan attached to this report at appendix 1.
- 2.3 Delegate authority to the Strategic Director of Regeneration & Environment, in consultation with the Lead Member for Regeneration, Property and Planning to agree the terms and enter into contract for the leasehold interest at Blue Box Storage, Exeter Court, Granville Road, London NW6 5AJ. The estimated compensation settlement is shown in confidential appendix 2.
- 2.4 Authorise the purchase of leasehold interests required for the Scheme by private treaty and delegate authority to Strategic Director of Regeneration & Environment, in consultation with the Lead Member for Regeneration, Property and Planning to agree the terms and enter into contracts.
- 2.5 The Cabinet is asked to note that the Council will remain sensitive to the needs of leaseholders affected by the impact of the Coronavirus pandemic and will engage in early dialogue and provide support for relocation to mitigate the impact.
- 2.6 That Cabinet agrees to authorise officers to take all necessary steps to commence the process for the making, confirmation and implementation of a CPO for each phase, including securing the appointment of suitable external advisors and preparing all necessary CPO documentation under delegated authority as set out in paragraph 2.2. The key steps to make a CPO are set out in paragraph 3.13. Appendix 3 sets out the policy in relation to displaced tenants and leaseholders in regeneration schemes, which aims to maximise choice and secure a better match with individual circumstances, such as shared ownership and shared equity options and reversion to tenancy for vulnerable leaseholders.
- 2.7 That Cabinet agree the detail of two additional measures to aid leaseholder acquisitions. Both measures will allow officers to further assist resident leaseholders who meet the criteria.
 - a) **Shared Equity/Ownership:** The Council will seek to acquire a number of properties from the local market and offer these as shared equity or shared ownership homes to eligible resident leaseholders. The way the shared equity product would work is this. The Council will purchase a property from the local market that meets the needs of the resident leaseholder. At the same time, the Council will purchase the resident leaseholder's property in a back-to-back transaction. The resident leaseholder will use funds made available from the buyback to purchase a percentage of the equity in the replacement property. Any value gap (typically 25% to 50%), will be met by the Council, and the Council's stake in the property is entered as a charge against the property. The

resident leaseholder will not pay a rent on the equity they do not own and will be able to purchase the share they do not own in accordance with the shared equity agreement (known as staircasing). See paragraph 3.18. Any shared ownership scheme, if available, will be a part buy part rent scheme.

Cabinet agrees to delegate approval for each shared equity/ownership contract on a case-by-case basis to the Strategic Director for Regeneration and Environment in consultation with the Director of Finance.

- b) **Council tenancy:** In exceptional circumstances, where assessment by a financial advisor indicates reduced financial security and supported by criteria set out in section 3.19 the Council can offer the leaseholder a council tenancy as part of the acquisition of their existing leasehold property at a reduced market value.

Cabinet agrees to delegate approval for each case to the Strategic Director for Regeneration and Environment in consultation with the Strategic Director of Community and Wellbeing.

3.0 Background

- 3.1 The South Kilburn Masterplan review took place in 2016, and the community are at the heart of the decision-making process. The Council has taken an inclusive and participatory approach to consultation and engaged with residents and stakeholders of South Kilburn with extensive local consultation 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.
- 3.2 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.
- 3.3 The Council is putting considerable effort into engaging with all known owners of land or other interests that will be directly affected by the Scheme. However, in seeking authorisation for the making of a CPO for each phase – at this time - enables the Council to demonstrate that it is willing to use a CPO as a means of last resort to deliver the Scheme. The authorisation will assist in the process of engaging with landowners and helps to ensure that the parties that would be directly affected by the Scheme take negotiations seriously. A CPO would only be used where a negotiated settlement on reasonable terms cannot be reached within the programme timescales. Members to note that only one leasehold interest needs to remain outstanding to impede delivery of a phase within the Scheme and this would eventually necessitate use of a CPO.

- 3.4 A detailed referencing process will be undertaken prior to making a CPO to confirm all land interests within the proposed Order Lands, including identifying any unknown interests. The Statement of Reasons is a key document which will set out the reasons why the Council is seeking to use CPO powers, the legislation that it intends to apply, and details the efforts undertaken to acquire interests and confirm that there are no impediments to the Scheme progressing.

Acquisition of land Interests

- 3.5 Details of interests that have been acquired by negotiated agreement and outstanding interests to be acquired, which may be the subject of a CPO are set out below:

Block	Leaseholder interests acquired	Outstanding residential leasehold interests	Outstanding commercial interests
Peel Precinct	34	0	0
Stuart Road	4	0	0
Cullen House	2	0	0
Exeter Court	7	0	1
Hereford House	9	1	0
Wordsworth House	5	3	0
Neville House	0	1	0
Winterleys Court	2	3	0
Austen House	0	6	0
Carlton House	3	5	0
Dickens House	4	8	0
Blake Court	4	5	0
John Radcliffe	2	14	0
Zangwill House	0	7	0
William Dunbar	1	10	0
William Saville	0	8	0
Masefield House	1	0	3
Canterbury Road	1	0	0
Crone Court	4	4	0
Craik Court	3	4	0
Total	86	79	4

- 3.6 The Cabinet report of August 2020 updated the Cabinet of the progress of the South Kilburn Regeneration Programme and set out a high-level summary of current projects and expected progress for the coming year.
- 3.7 The Council will seek to negotiate a settlement in respect of all remaining outstanding interests. In some cases, the negotiations may not achieve an acceptable outcome and therefore the Council may not be left with any alternative other than to seek the use of CPO powers in order to be able to deliver the Scheme in a timely fashion.

- 3.8 There are likely to be other land interests and rights which will need to be extinguished or overridden but they will not be known until the full referencing exercise is completed. Typical examples of such interests include Way-Leaves, Rights of Way, Third Party rights, Rights to Light and Oversailing rights.
- 3.9 All land interests will be established via a referencing process and where appropriate, negotiated settlements will be sought to allow the Scheme to proceed unhindered.
- 3.10 Failure to acquire all relevant interests on the Estate will put at risk the aspirations for a comprehensive regeneration of the Estate to deliver the Scheme and its various benefits. The Council is seeking to mitigate this risk by preparing to obtain and implement CPO powers on a precautionary basis.
- 3.11 Failure to initiate the CPO process in a timely fashion will risk delay to the Scheme or the Scheme proceeding at all. It may also lead to cost escalations and reduce the quantity of affordable housing that can be delivered by the Scheme.
- 3.12 There is a risk that there will be objections to a CPO leading to a public inquiry or a written representations process, which could result in significantly greater cost and delay. The Council will seek to engage with parties as to issues of concern and seek to reach agreement to avoid objections, where possible.

CPO steps

- 3.13 Without prejudice to the generality thereof, the delegated authority to make the CPO and pursue its confirmation includes in summary the following activities:
- a) authorising the making of the compulsory purchase order under Section 226(1) (a) of the Town and Country Planning Act 1990 (as amended by Section 99 of the Planning and Compulsory Purchase Act 2004) and if required for any new rights over the land pursuant to Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981 in order to secure the regeneration of the Estate as described in this report;
 - b) acquiring all known interests in land and any additional interests identified through the land referencing process within the CPO boundary either by private agreement or compulsorily. The proposed CPO boundary containing the proposed Order Lands is shown on the plan at Appendix 1;
 - c) acquiring any new interests in land necessary for the delivery of the Scheme either by private agreement or compulsorily;
 - d) arranging for the publication and/or service of any notices required in respect of the CPO, including its implementation;
 - e) ensuring on behalf of the Council that appropriate efforts have been made to reach negotiated settlements before the CPO is made;

- f) seeking confirmation of the CPO by the Secretary of State (or, if permitted, by the Council pursuant to Section 14A of the Acquisition of Land Act 1981), including the preparation and presentation of the Council's case at any public inquiry which may be held in respect of the CPO, or any written representations procedure;
 - g) implementing the CPO by way of general vesting declaration and or notice to treat / notice of entry or other means; and
 - h) dealing with any disputes relating to the CPO including as regards compensation and any references of matters to the Upper Tribunal (Lands Chamber).
- 3.14 Before and during the compulsory acquisition process, the Council will continue the process of seeking to acquire the properties sought by negotiation and private agreement.
- 3.15 It is important that the regeneration programme gives due consideration to the circumstances of, and the options available to, leaseholders and to the equality and human rights implications of any proposals. There is a need for early, continuing and meaningful engagement with leaseholders collectively and individually so that barriers and solutions are identified and agreed at an early stage. It is also important to stress that solutions must be practical, legal and proportionate. There could be a risk that a small number of leaseholders can effectively block, or delay, the regeneration programme and it is therefore important that there should be clarity from an early stage about what the Council can or cannot offer. The options for leaseholders and tenants is communicated through personal engagement, consultation exercises and various publications.
- 3.16 The policy set in appendix 3 sets out the basis of the Council's future policy about the needs of residents required to move as a result of estate regeneration programmes. The focus is on the position in relation to resident leaseholders, but the policy also considers non-resident leaseholders, tenants, including those renting privately in properties sold through the Right to Buy (RTB) and the more limited number of affected freeholders.
- 3.17 Although the Council is the majority freeholder and landlord, there are many leasehold and other interests within the Estate needing to be secured for land assembly purposes and to enable the Scheme to be implemented. The freeholders and leaseholders will be invited to enter discussions with the Council about compensation and relocation. The Council's negotiations with some of the freeholder and leaseholders have indicated that it is likely that the timely acquisition of these interests on reasonable terms and within a realistic timescale will, in some instances, only be achievable through compulsory purchase. CPO powers are therefore essential to enable the necessary interests to be acquired and for site assembly to be achieved, thereby enabling the Scheme to be delivered.

Shared equity offer (including shared ownership)

3.18 This option would apply where an owner-occupier (resident) is unable to find an alternative property due to their financial circumstances and the Council is unable to offer a Shared Equity homes from the new developments within the Order Lands. Therefore, to enable the Council to effectively support leaseholders with the relocation process it is important to retain an alternative offer of a Shared Equity home to eligible leaseholders. In order to offer a Shared Equity offer, the Council may need to purchase properties from the open market for onward sale as a Shared Equity product to leaseholders who qualify. This option has previously been agreed at Cabinet and the Appendix to Brent Council's Allocations Scheme, Policy – Council's Housing Offer for Displaced Tenants and Leaseholders in Regeneration Schemes can be found attached (appendix 3).

Residents would have to meet the minimum criteria set out below:

- Reside in the property in South Kilburn as their main and principle home;
- Have a strong requirement for staying in South Kilburn for family or work priorities;
- A Shared Equity policy will be developed in conjunction with Legal and Finance to set out the shared equity agreement and financial criteria.

At this time, officers estimate the demand for the Shared Equity product may apply to up to 15 residents.

Council tenancy offer

3.19 In very exceptional circumstances, where assessment by a financial advisor indicates reduced financial security, and supported by criteria set out below, the Council can offer the leaseholder a Council tenancy as part of the acquisition of their existing leasehold property at a percentage of market value.

Residents would have to meet the minimum criteria set out below.

- Reside in the property in South Kilburn as their main and principle home;
- Undergo a financial assessment and be in a position where they are unable to secure a mortgage;
- Have a strong requirement for staying in South Kilburn for family or work priorities;
- Be over national retirement age or due to ill health be unable to work.

It should be noted as set out in the policy that such leaseholders would have assets well above the £50,000 limit imposed by the Council's Allocation Scheme, although they will have an income below the current limits.

At this time, officers estimate that the demand for the Council tenancy option may apply to up to 5 residents.

4.0 Financial Implications

- 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 CPO process will be paid out of existing budgets. CPO processes are not always straightforward, and it is incumbent on the Council to demonstrate that it has put forward a fair and appropriate offer to owners. The Council has provided a variety of options for landowners that are intended to satisfy the requirements of the legislation and mitigate its risk and the risk to the wider regeneration programme.
- 4.4 This report refers to the continuation of the existing programme of leaseholder buybacks, however, this is an existing financial commitment.
- 4.5 The purchase of open market properties to facilitate shared equity/ownership will be funded from South Kilburn Programme Budget.

5.0 Legal Implications

Compulsory Purchase Order

- 5.1 The Council has power to make a compulsory purchase order under section 226 (1) (a) of the Town and Country Planning Act 1990 if it thinks that the acquisition will “facilitate the carrying out of development, redevelopment or improvement or in relation to the land”. Under section 226(1) (A) the Council must not exercise the power under sub paragraph (a) unless it thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects – (a) the promotion or improvement of the economic wellbeing of their area; (b) the promotion or improvement of the social wellbeing of their area; (c) the promotion or improvement of the environmental wellbeing of their area. Compulsory purchase orders must only be made if the Council is satisfied that there is a compelling public interest to do so. Paragraph 12 of the Guidance on compulsory purchase and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion:
- 5.2 “A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority 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. 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.

- 5.3 It is necessary therefore to consider the human rights implications of making a CPO. The Convention Rights applicable to the making of any CPO orders are Articles, 6 and 8 and Articles 1 of the First Protocol.
- 5.4 The overarching consideration for the Council when making CPO orders and for the Secretary of State in deciding whether it should confirm the orders (as set out in paragraphs 12 to 15 of the Guidance) is whether there is a compelling case in the public interest which justifies the interference with the human rights of those with an interest in the land affected.
- 5.5 Paragraphs 2 and 12 of the Guidance advice that a compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority 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 and is proportionate. 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.
- 5.6 Delivery of the Scheme would help fulfil the Council's key planning policy objectives for the area and transform the estate. It would contribute significantly to the improvement of the economic, social and environmental well-being of the area and these will be set out each Statement of Case pertaining to the application of CPO orders.
- 5.7 It is highly unlikely that **all** the outstanding property interests required for the Scheme could be assembled by negotiated agreement and without the making of a CPO. In making its assessment of the justification of a CPO, the Council will take into account the rights of those who may be affected by a CPO and the Council will have due regard to its public sector equality duty under section 149 of the Equality Act 2010. In the Council's view, the considerable public benefits of the Scheme outweighs the interference with the human rights of those likely to be affected by compulsory purchase and there is a clear compelling case, in the public interest, for the making of a CPO as necessary.

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. 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 and following the detailed Masterplan Review 2016 and the recently adopted South Kilburn Supplementary Planning Document 2017.

- 6.2 Every effort will 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 will 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 has been 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).
- 6.4 Due to the ethnicity profile of the area, full consideration has been given to the impact on black, Asian and minority ethnic individuals/groups. The Council has ensured that the options put forward to residents and leaseholders 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 in the same area. To counteract this effect, resident leaseholders will be offered the option of shared-equity/ownership (and in exceptional cases reversion to tenancy) on the South Kilburn Estate wherever possible, subject to availability. The purpose of making the offers on the Estate is to ensure that the objectors remain on the Estate are within the same locality and there is a real sense of social cohesion. 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.
- 6.8 The Equalities position for those who currently remain affected by the Scheme is detailed in the Equalities Impact Report. Cross reference should also be made with the Housing Policy Report.
- 6.9 The new accommodation within the Scheme will be designed to meet the requirements set out in Part M4 (2) 'accessible and adaptable dwellings' and a percentage will be wheelchair adaptable dwellings and meet the requirements set out in Part M4 (3) 'wheelchair user dwellings'.

7.0 Human Resources / Property Implications

7.1 There are no further property implications or human resources implications in relation to this report.

Appendices:

Appendix 1: Proposed Order Lands

Appendix 2: Purchase of Bluebox

Appendix 3: Tenant and leaseholder policy

Report sign off:

Alan Lunt

Strategic Director for Regeneration and Environment