


REPORT CONSULTATION FORM

 <p style="font-size: 24pt; font-weight: bold; margin: 0;">Brent</p>	<p style="font-size: 18pt; font-weight: bold; margin: 0;">Cabinet</p> <p style="font-size: 16pt; margin: 0;">06 April 2021</p> <hr/> <p style="font-size: 14pt; font-weight: bold; margin: 0;">Report from the Strategic Director of Regeneration and Environment</p>
<p style="font-size: 14pt; font-weight: bold; margin: 0;">South Kilburn Regeneration Programme: Approval of Procurement Processes for Future Phases and Associated Matters</p>	

Wards Affected:	Kilburn
Key or Non-Key Decision:	Key Decision
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Part Exempt - App 4 is exempt as it contains this 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:	<p>Four</p> <p>Appendix 1: Redline Boundary 1-8 Neville House, 1-64 Winterleys, 113-128 Carlton House, Carlton Hall</p> <p>Appendix 2: Sites from Phase 3b onwards as part of the South Kilburn Masterplan Programme</p> <p>Appendix 3: Cabinet South Kilburn Programme (August 20)</p> <p>Appendix 4: Capital Funding Criteria (exempt)</p>
Background Papers:	
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1 Purpose of Report

- 1.1 This report is seeking approval for a number of matters relating to the ongoing South Kilburn estate regeneration programme.

2 Recommendation(s)

That Cabinet

- 2.1 Approve the procurement of a delivery partner for the NWCC site including, 1-8 Neville House, 1-64 Winterleys, 113-128 Carlton House and Carlton Hall; through inviting tenders using a Competitive Procedure with Negotiation under the Public Contracts Regulations 2015.
- 2.2 Approve the procurement of delivery partners/contractors for the remaining Phases (3b-8) of the South Kilburn Programme sites.
- 2.3 Delegate authority to the Strategic Director of Regeneration & Environment in consultation with the Lead Member of Regeneration, Property and Planning, to select the appropriate procurement route and pre-tender considerations for those remaining sites within Phases 3b-8 and to evaluate such tenders.
- 2.4 Delegate to the Strategic Director of Regeneration and Environment in consultation with the Lead Member Regeneration, Property and Planning authority to award the contract for Delivery Partners to progress the comprehensive redevelopment of the remaining sites from Phase 3b-8 within the South Kilburn Programme.
- 2.5 Delegate to the Strategic Director of Regeneration and Environment in consultation with the Lead Member Regeneration, Property and Planning the decision on alternative development routes if procurement is unsuccessful in relation to the remaining sites from Phase 3b-8 within the South Kilburn Programme.
- 2.6 Approve the setting of rent levels for the affordable homes at all remaining sites within the Programme (Phases 3b-8) at the South Kilburn Social rent levels.
- 2.7 Approve capital funding (strategic community infrastructure levy) of £4.9m to deliver the infrastructure and public realm works within the NWCC Project.

3 Detail

NWCC Procurement

- 3.1 The scheme received planning permission in July 2020. Vacant possession of the NWCC buildings is expected, by the end of 2021. The Council is seeking to engage a delivery partner for the NWCC site. The estimated timescales for the delivery partner to start on site is winter 2021/early 2022.
- 3.2 The procurement will be undertaken by inviting tenders using Competitive Procedure with Negotiation under the Public Contracts Regulations 2015 ("PCR 2015") on the basis of the pre-tender considerations set out in para 3.3 below commencing by placing a notice on the Find A Tender Services (FTS).
- 3.3 In accordance with Contract Standing Orders 88 and 89, pre-tender considerations have been set out below for the approval of the Cabinet.

Ref.	Requirement	Response
(i)	The nature of the service/ works.	To procure a delivery partner to develop the NWCC site.
(ii)	The estimated value.	As the procurement is for a delivery partner, the Council could receive a receipt for the sale of the site. Any contract will have a value in excess of £5m thus being a High Value Contract under the Council's Contract Standing Orders and requiring Cabinet approval to tender.
(iii)	The contract term.	The contract period will be approx. three years.
(iv)	The tender procedure to be adopted including whether any part of the procedure will be conducted otherwise than by electronic means and whether there will be an e-auction.	PCR 2015 compliant Competitive Procedure with Negotiation procurement route, in which parts of the procedure may be conducted by electronic means but there will not be an e-auction.
v)	The procurement timetable.	<p>The procurement would be undertaken during 2021 Indicative milestones/timescales are:</p> <ul style="list-style-type: none"> • Contract Notice placed • Expression of Interest • Selection Questionnaire (SQ) – 30 days • Evaluation of SQ responses in accordance with the Council's approved criteria – 10 days • Invitation to tender period – 6-10 weeks • Panel evaluation, moderation– 10 days • Further round of shortlisting/Negotiation meetings (if required) • Panel decision • Seek approval from Strategic Director to award contract • Standstill period – 10 calendar days
(vi)	The evaluation criteria and process.	Shortlists will be drawn up in accordance with the Contract Procurement and Management Guidelines namely the SQ and thereby meeting the Council's financial standing requirements, technical capacity and technical expertise. Officers will evaluate the tenders from the shortlisted bidders on the basis of "most economically advantageous tender criteria" (MEAT) on the basis of: 60% - price

Ref.	Requirement	Response
		30% - quality 10% - social value
(vii)	Any business risks associated with entering the contract.	The Council will ensure the Development and Sale Agreement is drafted to minimise business risks.
(viii)	The Council's Best Value duties.	The procurement process will seek to ensure best value is achieved.
(ix)	Consideration of Public Services (Social Value) Act 2012.	See Paragraph 9 below.
(x)	Any staffing implications, including TUPE and pensions.	None.
(xi)	Sustainability	The Development Agreement will have provisions to cater for sustainability methods that demonstrate how this project best supports the Councils priorities.
(xii)	The relevant financial, legal and other considerations.	See Paragraphs 4 and 5 below. This proposed procurement process would be in line with the Council Standing Orders and the Public Contract Regulations 2015.

3.4 The Cabinet is asked to give its approval to these proposals as set out in the recommendations and in accordance with Standing Order 89.

Procurement of Remaining Phases of the South Kilburn Regeneration Programme

3.5 The Council is seeking approval to engage delivery partners/contractors for the remaining phases 3b-8 of the South Kilburn Regeneration Programme. The procurement route to be followed will be under the PCR 2015 but to allow flexibility in an uncertain market, it is proposed to delegate authority to the Strategic Director of Regeneration & Environment in consultation with the Lead Member for Regeneration, Property and Planning, to select the appropriate procurement route and pre-tender considerations for those remaining sites within Phases 3b-8. In the event of unsuccessful procurement, authority would be delegated, to determine an alternative course of action to secure the developments, such as self-delivery by the Council. Delegation of this responsibility will provide the flexibility required, to successfully secure delivery of the programme without the requirement for further Cabinet approvals.

3.6 For clarity sites within Phases 3b-8 are as follows:

- Hereford House & Exeter Court
- Wordsworth & Masefield
- Granville Open Space

- Carlton & Granville
- Neville, Winterleys, Carlton House
- Dickens House
- Austen
- Blake Court
- School Sites
- Craik Court
- Crone Court & Zangwill House
- John Ratcliffe
- William Dunbar & Saville House
- This includes all public realm, open space and infrastructure projects as part of the South Kilburn Regeneration Programme.

Brent Housing

- 3.7 As referenced in the August 2020 South Kilburn update Cabinet report, Cabinet agreed the approach of Brent Housing being the preferred provider of social housing and this is the intended approach and option that will be put forward for the NWCC site in the future procurement.

Capital Funding

- 3.8 Within the NWCC project, there is a high level of affordable housing (54% by habitable room) which may have an impact on the overall viability of the scheme. Therefore, it is proposed, to make the procurement more attractive to potential developer partners, the Council will contribute to the infrastructure/public realm costs. The infrastructure and public realm costs relate to the external works, which include soft and hard landscaping, and infrastructure works including drainage, utilities and services (electricity, gas, water and telecoms). A cost plan was prepared by the Council's cost consultant, Deloitte.
- 3.9 This proposed contribution will in turn support the overall viability of the scheme, which will lead to the Council receiving the desired quantum of affordable housing and envisaged outcomes and wider benefits.
- 3.10 The Council's Capital Investment Panel, in April 2020, supported £4.9m from the capital pipeline for infrastructure and public realm projects for the external works, from Strategic Community Infrastructure Levy funding. Appendix 4 – Funding Criteria (exempt) provides further information.

South Kilburn Rents

- 3.11 In 2011 the then Executive (now Cabinet) agreed to adopt rent levels equivalent to the then Formula Rent levels in South Kilburn on phases 2 and 3 and subsequent phases, being the maximum rent a local authority could charge for its stock. It should be noted that Housing Associations (Registered Providers) were not bound by this cap therefore the Council's decision had the effect of controlling rent levels in South Kilburn via the Planning Permission and subsequent developer agreement. These rents are calculated by a formula. Increases in the rent levels are linked to the rate of inflation (Consumer Price

Index – CPI) and subject to the cap. The exception in South Kilburn is one bedroomed flats where a lower than target rent was set in order to limit the level of increase experienced by residents who were being rehoused, although the annual inflation rate still applies as per other sized flats. Formula Rents are variously known, as Target Rents, Social Rents and “the” Rent Cap and the terms are interchangeable.

- 3.12 The February 2019 ‘Statement on Rents for Social Housing’ sets out the government’s rent policy for social housing from 1st April 2020 onwards. This allows for 2019-20 rents to be increased by CPI+1.5% per year.
- 3.13 The formula is based on national average rents, relative county earnings, bedroom weighting and property values, so there are a number of variables which are considered.
- 3.14 New social rented properties in South Kilburn have a higher capital value than existing Council properties and therefore will attract a higher rent under the formula. This is because 1) inflation would be applied to a higher base Rent and 2) the Council will sometimes (and more commonly than the Registered Providers managing the new properties in South Kilburn) not apply a full inflationary increase to rents across its own housing stock. Therefore it is likely that the “cap” will come into effect and limit the level of rents that the formula would create.
- 3.15 In line with the Council's commitment to maintaining Social Rent levels in regeneration areas it is recommended that the Cabinet agree to set the rent levels for the affordable units at the new NWCC development, and in the remaining phases of the Programme, at rents equivalent to the Homes England Target Rent levels, on the same basis as previously developed schemes in the masterplan area.

Number of bedrooms	Rent cap
1 and bedsits	£141.43
2	£149.74
3	£158.06
4	£166.37
5	£174.69
6 or more	£183.00

12. From 2020-21, rent caps will increase by CPI (at September of the previous year) + 1.5 percentage points, each year.

4 Financial Implications

- 4.1 This report is seeking Cabinet approval for the procurement of delivery partners/contractors for the remaining Phases (3b-8) of the South Kilburn Programme sites and the NWCC sites, and the drawdown of £4.9m from

Strategic Community Infrastructure Levy (SCIL) funding to cover the cost of works in relation to infrastructure and public realm for the NWCC sites. Procurement will be subject to the availability of resources and financial viability.

- 4.2 The South Kilburn programme has been allocated a budget of £71.2m over the next 5 years which includes £23.6m for 2021-22. The budget which has been agreed by Cabinet will be approved by Council on 22 February 2021.
- 4.3 The Council plans to dispose of some of the sites on a long lease. There is potential capital receipts and future overage payments from the private units.
- 4.4 The cost of this procurement and of acquiring the remaining interests and of the scheme design will be met from the existing approved budget.

5 Legal Implications

- 5.1 The contracts being proposed in this report fall within the definition of 'public works contract' under the Public Contracts Regulations 2015 (PCR 2015), the estimated value of each individual contract is likely to be above the procurement threshold for works contract (currently £4,733,252), and therefore the full rules of the PCR 2015 will apply to the procurement and award of the contract. Officers would also be expected to apply the rules set out in the Council's Contract Standing Orders (CSO).
- 5.2 The estimated value of the individual procurement is expected to be in excess of £5M and therefore it will be classed, as a High Value Contract under CSO and accordingly the Cabinet has the authority to approve the pre-tender considerations set out in paragraph 3.3 above (Standing Order 89) and the invitation of tenders (Standing Order 88).
- 5.3 Officers consider that the redevelopment of the NWCC site is best achieved through the use of a development agreement with a third party. The current position of the law requires that the development partner be sourced through competitive procurement procedure, inviting tenders using the Competitive Procedure with Negotiation under the PCR 2015 as proposed under Recommendation 2.1 would meet this requirement. Once the procurement process has been undertaken under the PCR 2015, officers will report to the Cabinet in accordance with CSO, explaining the process undertaken in tendering the contract and recommending award.
- 5.4 For the remaining sites Phases 3b-8 of the Programme, Cabinet has the power to delegate its powers to the Strategic Director of Regeneration & Environment in consultation with the Lead Member of Regeneration, Property and Planning, to select the appropriate procurement route in light of expected changes to the procurement rules (as a result of Brexit) and the requirements of the project and market conditions (due to changes that may occur due to the pandemic). If the Chief Officer were to decide to use an existing Framework contract from another public authority, the CSO requires that the Director of Legal, HR, Audit and Investigations confirm that it is legally permissible to participate in such Framework.

- 5.5 Further details in relation to the structure of the deal to acquire the affordable units will be required so that further legal implications can be provided. It is understood that another report will be provided to Cabinet in due course.
- 5.6 The Council has powers pursuant to section 17 of the Housing Act 1985 (the Act) to purchase land for housing purposes by way of agreement. The housing purchased pursuant to the Act will sit within Housing Revenue Account and the powers and duties of the Council in relation to the affordable housing will be set out in part II of the Act.

6 Equality Implications

- 6.1 The public sector equality duty (section 149 of the Equality Act 2010), requires the Council, when exercising its functions, to have “due regard” to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, to advance equality of opportunity and foster good relations between those who have a “protected characteristic” and those who do not share that protected characteristic. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 6.2 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
- 6.3 There is no prescribed manner in which the Council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary.
- 6.4 The procurement route itself does not have any impact on the Council’s obligations under the public sector equality duty.
- 6.5 The new affordable homes in NWCC and later developments are available to existing South Kilburn Council tenants currently living in properties due for demolition as part of the South Kilburn regeneration programme.
- 6.6 As with all schemes that are part of the South Kilburn regeneration programme, full consideration is and will continue to be given to residents and leaseholders with protected characteristics, particularly people with disabilities and / or other types of vulnerabilities due to older age, childcare and/or caring responsibilities, socio-economic status (single parents and large families). The Council will/has ensured that the options put forward to tenants 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. The re-housing team provides help to secure tenants through the moving process, additional support and services to those who require it.

Staffing/Accommodation Implications

- 6.7 If procurement processes are changed to involve more than one site at a time there may be some efficiency savings due to the reduction in the number of individual procurement processes.
- 6.8 If the delivery model is changed and the Council leads on the developments and retains ownership, there are considerable implications for the capacity of property and housing teams. Full financial modelling on the different options will be undertaken in order to understand the different financial implications.

7 Consultation with Ward Members and Stakeholders

- 7.1 There have been regular meetings with key stakeholders, including ward members and the lead member for Regeneration, Property and Planning.

8 Human Resources/Property Implications (if appropriate)

- 8.1 There are no specific implications for Council staff or accommodation associated with the proposals contained within this report.

9 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 proposed procurements.
- 9.2 The contracts being procured aim to improve the economic, social and environmental well-being of residents of South Kilburn through the comprehensive redevelopment of the NWCC site for new homes and an improved environment.
- 9.3 Where possible the contracts will require the Delivery Partner/Contractor to:
- provide opportunities for local people or prioritise local people for employment opportunities that may arise during this contract (e.g. apprenticeships, work placements for disabled people or BAME groups);
 - pay the London Living Wage as part of the Council's commitment to reduce socioeconomic disadvantage.

Social Value will form a scored element of the procurement, including identifying how the Delivery Partner will target engagement of disabled people, young people, older residents and BAME groups on the development of an inclusive and accessible design; easy materials; translation and interpreting services, etc.

Report sign off:

ALAN LUNT

Strategic Director of Regeneration and Environment