



**Cabinet**  
19<sup>th</sup> July 2021

**Report from the Strategic Director of  
Community Well Being**

**Watling Gardens & Windmill Estate Infill Redevelopment  
Programme**

<b>Wards Affected:</b>	Kilburn & Mapesbury
<b>Key or Non-Key Decision:</b>	Key
<b>Open or Part/Fully Exempt:</b> (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
<b>No. of Appendices:</b>	Six Appendix 1: Offer to Secure Tenants Appendix 2: Offer to Leaseholders Appendix 3: Watling Gardens Existing and Proposed Appendix 4: Watling Gardens Demolition Area Appendix 5: Windmill Court Existing and Proposed Appendix 6: Windmill Court Demolition Area
<b>Background Papers:</b>	None
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**1.0 Purpose of Report**

1.1 The report provides an update on the proposed housing development projects at Watling Gardens and Windmill Court which aim to deliver 125 new Council Homes at Watling Gardens and 60 new homes at Windmill Court. These developments form part of the Councils approach to delivering 1000 new affordable homes over the period 2019-2024 using land already owned by the Council as the most cost effective method of development.

- 1.2 A number of legal recommendations are required to be approved in order to facilitate the development relating to potential Compulsory Purchase and Appropriation of Council owned Land. As part of the proposals to build new homes at Watling Gardens and Windmill Court it will be necessary to demolish 59 properties however this will not be sufficient to trigger any ballot requirement dictated by the London Mayor as a condition of obtaining grant. The recommendations will enable Officers to pursue Compulsory Purchase of 16 Leaseholder owned properties should it be necessary however the primary objective will be to negotiate a positive offer to affected leaseholders and a Compulsory Purchase Order (CPO) will only be considered as a last resort.
- 1.3 At both Watling Gardens and Windmill Court individuals, by virtue of leases held or other means, may have gained rights such as a “Right of Way” or a “Right to Light”. The process of appropriation converts an individuals’ right to the benefit bestowed by the right to compensation for the loss of the benefit. This report seeks approval to commence the process of Appropriation which creates the mechanism for individuals to receive compensation for the loss of these rights.

## **2.0 Recommendations**

For Cabinet to agree

- 2.1 To authorise the Strategic Director Community Wellbeing to seek the approval of the Secretary of State to redevelop the sites under Ground 10A of Schedule 2 of the Housing Act 1985 to obtain vacant possession of properties at Watling Gardens and Windmill Court separately in order to redevelop and or demolish each of the Sites.
- 2.2 To delegate authority for the Strategic Director Community Wellbeing to make an application to seek the Secretary of State’s consent under section 19 of the Housing Act 1985 to appropriate any part of Watling Gardens, Windmill Court or Kilburn Square including any part consisting of a house or part of a house so that parts of these sites are no longer held for the purposes of Part II of the Housing Act 1985.
- 2.3 To delegate authority to the Strategic Director Community Wellbeing in consultation with the Lead Member for Housing & Welfare Reform to consider the impact of the Public Sector Equality implications and to ensure compliance with such duty and thereafter to consult with those affected by the appropriation of Watling Gardens and Windmill Court and to consider the responses of the consultation and thereafter and where appropriate to appropriate each of the sites separately for planning purposes to in order to facilitate the redevelopment of the site for which planning permission is being sought.
- 2.4 To note the offers made to secure tenants and leaseholders within Appendix 1 and 2 which aim to maximise choice and secure a better match with individual circumstances, by offering shared ownership and

shared equity options and reversion to tenancy for vulnerable leaseholders.

- 2.5 Authorise the purchase of leasehold interests required for the schemes by private treaty and delegate authority to Strategic Director Regeneration & Environment, in consultation with the Lead Member for Regeneration, Property and Planning to agree the terms of each purchase and enter into Contracts and to agree the payment of compensation in accordance with the Circular mentioned in Section 6 below.
- 2.6 That Cabinet agrees to delegate authority to the Strategic Director Community Wellbeing to take all necessary steps to commence the process for the making, confirmation and implementation of a Compulsory Purchase Order (CPO) for Watling Gardens or Windmill Court separately, including securing the appointment of suitable external advisors for each of the Sites and preparing all necessary CPO documentation under delegated authority. The key steps to make a CPO are set out in paragraph 6.0. Prior to doing so will consider and have due regard to the impact of the Council's Public Sector Equality Duty
- 2.7 Agree that the use of CPO powers is exercised after balancing the rights of individual property owners with the requirement to obtain vacant possession of properties at Watling Gardens and Windmill Court.
- 2.8 That Cabinet authorise serving of the Initial demolition notices to suspend the secure tenants' right to buy at Watling Gardens and Windmill Court and to serve the final demotion notices once the date for demolition is known.

### **3.0 Background**

#### ***Housing Need and New Council Homes Programme***

- 3.1 There is a shortage of genuinely Affordable Housing in London. Brent has 1734 families living in Temporary Accommodation as at the end of April 2021, plus a further 900 in priority bands A and B on the Waiting List. Brent Council committed to developing 1,000 new Council homes between 2019 and 2024. Officers have identified that most opportunities to supply new and affordable homes within the Borough will come from further developing estates owned by The Council on existing land.
- 3.2 Accordingly, Watling Gardens and Windmill Court are estates that have been identified as providing sufficient development opportunities to increase the amount of affordable housing on each of the sites. In May 2020 and December 2021, PCG received an update report on the progress made towards delivering the Council's housing target of 1000 new affordable homes over the 5-year period (2019 – 24), and amongst other sites, Watling Gardens and Windmill Court were included. Accordingly, the redevelopment and development of Watling Gardens and Windmill Court will contribute towards the improvement of the economic social and environmental wellbeing of the area.
- 3.3 Watling Gardens and Windmill Court were chosen due to the relatively low density of housing on the sites compared to modern developments

in London and the fact that the land is wholly owned by the Council and thus avoids land acquisition costs. Furthermore the development provides the opportunity to carry out extensive long term soft and hard landscape improvement works. The infill programme on each of the sites will deliver new play facilities, activity areas, revised parking arrangements, improvements to a community hall, improved environmental and wellbeing spaces and solve the current problems of anti-social behaviour in the undercroft. It is possible to omit some or all of these improvements however this will reduce the positive impact of the development.

- 3.4 The Council's objective, as it is all on all New Councils Homes sites, is to provide high quality and energy efficient new homes. The redesign of each of the Sites has been carefully considered to contribute to a better standard of living for the incoming and existing residents, for example, by developing a new landscape strategy to re-organise and improve the amenity spaces, by creating employment and training opportunities through Contractor Local Labour requirements, and by offering existing residents on these estates, who have a housing need, the opportunity to move into the new and more suitable properties.
- 3.5 As part of these infill proposals the design team(s) will focus on improving the quality of external landscaping and amenity space so that all residents will benefit from improvements to the external environment. These areas will be designed following close consultation with existing residents. It should be noted that this consultative process will not be classed as a co-design opportunity and ultimately the Councils objective of delivering more affordable homes will be the primary objective. The Plans at Appendix 3 and 5 show the layout of the current sites and existing images against what is proposed: Proposals on the 2 estates will add 185 Social rent, London Affordable rent and Extra Care properties to The Council's Housing portfolio.

### ***Watling Gardens***

- 3.6 Watling Gardens is located in the Mapesbury Ward adjacent to the boundary with LB Camden, which runs along Shoot-Up Hill. Built in 1958 the estate is home to more than 500 residents who occupy 167 properties. The current estate layout provides little or no personal garden space (defensible space) to ground floor dwellings, inadequate natural surveillance and poor segregation between pedestrian and motor vehicle routes creating isolated and remote car parking areas and poorly overlooked pathways. The parking area beneath the podium at Claire Court has experienced some issues with anti-social behaviour over recent years. Overall this is a pleasant estate managed by a Tenant Management Organisation (TMO) however some of the current parking arrangements and the external arrangement is dated leading to problems as described above. The photographs at Appendix 3 show aspects of the site as it currently is.
- 3.7 The redevelopment proposals which include the demolition of 1 – 11 Watling Gardens, 1-30 Claire Court and the associated podium parking mentioned above, will facilitate the construction of 125 new Council homes (80 Residential and 45 Residential for Older People) in 3 buildings, five and fourteen stories in height, a revised parking layout that

provides natural surveillance and increases security. In addition to increasing the number of affordable homes on the estate, the re-development will also increase the percentage of family sized properties to address housing needs on the estate and in the borough, provide energy efficient homes that will meet the aims of the Council's Climate Emergency, tackle some of the negative issues with the current layout by increasing active frontages and overlooking of the public realm. Landscape proposals will improve the current open lawns and derelict play areas by providing activity areas for residents of all ages and ability and create opportunities for social interaction. The images/drawings at Appendix 3 show how the site could be following development. Appendix 4 shows the Demolition Area for Watling Gardens

### ***Windmill Court***

- 3.8 Windmill Court is made up of a 17 storey concrete slab tower block and a series of 2 and 3 storey structures comprising 1-18 Windmill Court, a two-storey carpark and a community room. Built in 1967 the estate comprises of 138 family homes, 120 in the tower block and 18 in the maisonettes. The base of the tower is dominated by concrete, low quality hard landscaping and car-parking. There is little to no active frontages addressing the public realm and when approaching it on foot, it is not clear where the main entrances are. This is exacerbated at night where the poor quality lighting adds to the intimidating atmosphere. Similar to the podium parking at Watling Gardens, the ground floor of the parking area has experienced issues with anti-social behaviour and criminality over the years. The photographs at Appendix 5 show some of the aspects of the site as it currently is.
- 3.9 The redevelopment proposals, which include the demolition of 1 – 18 Windmill Court and the two storey parking area at the base of the tower will facilitate the construction of 60 new affordable energy efficient Council homes in 2 buildings, seven stories in height, a revised parking layout that provides natural surveillance and increases security. In addition to increasing the number of affordable homes on the estate the re-development will also enhance the existing landscaping spaces, resolve how the existing tower meets the ground, to create a more welcoming, attractive and safer environment and provide integrated cycle, car parking and practical refuse and recycling storage. The images/drawings at Appendix 5 show the vision for the estate following development. Appendix 6 shows the Demolition Area for Windmill Ct.
- 3.10 In addition to the development works proposed there is also a need for significant planned works. Windmill Court is planned to be the Council's fourth major tower block refurbishment. This will follow Kilburn Square, Lodge Court and Manor House. It is currently anticipated, and subject to budget availability that works will commence at Windmill Court mid to late 2023. The works will comprise major works such as the external fabric, energy efficiency measures, internal refurbishment. The full specification will be developed following a detailed survey.

## **4.0 Engagement and consultation with local residents**

- 4.1 The Housing Supply and Partnerships Team (HSP) are working with Network Housing to deliver these schemes, this is as a result of the

March 2020 Cabinet decision to enter into a Co-operation Agreement with Network Homes in order to share resources and expertise in the delivery of social housing. HSPT leads the resident engagement process and ensures the scheme is in line with Council priorities. Network Homes will be responsible for submitting Planning Applications, managing the detailed design and construction process and the co-ordination and resolution of defects once the properties have been built. Both sites are currently at the design stage. Consultation started with the Watling Gardens TMO in September 2019 and has continued with both the Board and the Resident Panel set up to engage on the design proposals. Consultation with the Windmill Residents started in January 2020 and since the first on-site even most of the engagement has been conducted via Newsletters and virtual Resident Panel meetings. In total there are 59 properties due to be demolished and this is shown in the appendices.

- 4.2 The consultation has and will continue to focus on the following:
  - a) Design
  - b) Allocations policy
  - c) Market Purchases (Leaseholders)
  - d) Vulnerable Households
  - e) Advanced Acquisition (Leaseholders) and compensation (Tenants)
- 4.3 The project team will be basing early engagement offers of alternative accommodation and decant options for secure residents on the current Allocation Policy and the statutory consultation required in connection with the use of Ground 10A of the Housing Act 1985
- 4.4 The current Allocation Policy will apply to secure residents to be decanted from 1-11 Watling Gardens, 1-30 Claire Court and 1-18 Windmill Court. Under the current allocation policy secure residents affected by the infill developments will be placed into Band A on a phased basis to bid for an alternative home. Early engagement with residents and leaseholders has started with a view to obtain vacant possession of the required blocks as soon as possible
- 4.5 From 18 July 2018, the Mayor requires any landlord seeking GLA funding for estate regeneration projects which involve the demolition of social homes to show that residents have supported their proposals through a ballot. This is to make sure that GLA funding only supports estate regeneration projects if residents have had a clear say in plans and support them going ahead. The requirement applies to projects that involve the demolition of any social homes and the construction of 150 or more homes (of any tenure). Therefore the proposals at Windmill Ct and Watling Gardens are exempt from the need to undertake a ballot, but design has been underpinned by detailed engagement with residents and this will continue to be a feature.
- 4.6 A key principle of the New Council Homes Programme is that Engagement should commence at an early stage with ward members and residents. The Council has started early consultation on both sites, seeking views on design considerations and the principals in relation to tenant and leaseholder offers.

- 4.7 Consultation conducted to date has been within the existing Borough housing policy as it relates to acquisitions, decanting and rehousing.
- 4.8 There has been a series of meetings with residents of the two sites. The strategy includes putting in place resident panels that will work in partnership with TMOs and TRAs, where they exist. Consultation with residents due to be decanted has been mostly positive, especially where residents have been living in properties that do not meet their housing needs or require a substantial amount of repairs.

***Tenants***

- 4.9 As a result of this engagement, decanted residents have been and will continue to be moved from properties that no longer meet their housing needs to properties that are of an appropriate size. For example, discussions started with the residents at Watling Gardens in October 2019 and to date 17 secure tenants have already moved as a result of choosing to move to new properties, or just leaving their current property. In addition, secure tenants at 1 – 11 Watling Gardens will be moving from properties needing significant refurbishment works to more suitable properties.
- 4.10 A Landlord Offer has been developed which gives tenants a right to return, home loss and disturbance payments, where relevant. Only 3 residents have indicated an interest to return to Watling Gardens. The Allocations Team have made contact with all the affected tenants and are making offers of alternative accommodation when suitable properties become available.

***Leaseholders***

- 4.11 As part of the development of the sites it will be necessary to acquire a total of 16 of the leasehold properties at 1-30 Claire Court and 1-18 Windmill Court by way of private treaty. Officers will progress talks with each leaseholder, with a view to purchasing the leaseholder's interests to achieve vacant possession of Watling Gardens and Windmill Court. Securing the leaseholder's interests will ultimately ensure that the redevelopment at Windmill Court and Watling Gardens can progress without delay.
- 4.12 Offers made to the leaseholders are based upon the leaseholder offer shown in Appendix 2 and will typically include market value, and loss and disturbance payments at the relevant point in the process. The leaseholder offer accords with the CPO Compensation Code, best practice published in the Better Homes for Local People – The Mayor's Good Practice Guide to Estate Regeneration and the current Council policy as exercised at the South Kilburn Estate. Consultation has taken place with the affected leaseholders and will continue through to purchase completion.
- 4.13 The Council officers will seek to reach a negotiated settlement with leaseholders whose interests are required to deliver the remainder of the two sites according to the planned delivery of new homes. Should private treaty negotiations with the Leaseholders fail, the Council may, as a last resort, be required to use its CPO Powers in relation to Watling Gardens

and Windmill Court. 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 its Compulsory Purchase Powers if absolutely required.

- 4.14 An offer for leaseholds that need to be bought out has also been produced following six months of consultation with those affected and this follows the South Kilburn template, The Mayor's Good practice guidelines and government guidance. There have been objections to selling, but officers are continuing to work with Leaseholders to resolve these issues and find acceptable solutions.
- 4.15 Leaseholders are waiting for cabinet approval of the Leaseholder offer so they can benefit from the compensation that comes with the Council's purchase of their property. To ensure leaseholders are able to maximise choice and secure a better match with individual circumstances, officers are proposing to offer equity swap/shared ownership options and reversion to tenancy for vulnerable leaseholders.
- 4.16 Under the Shared Ownership option the Council will check to acquire a number of properties from the local market and offer these as shared equity or shared ownership homes to eligible leaseholders. Where necessary the Council will purchase a property from the local market that meets the need of the resident leaseholder. At the same time, the Council will purchase the 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 25-50%), 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 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). Any shared Ownership Scheme, if available, will be a part buy part rent scheme.
- 4.17 In exceptional circumstances, where assessment by a financial advisor indicates reduced financial security and that they reside in the property to be demolished as their principal home and are unable to secure a mortgage and are over the national retirement age or due to ill health are unable to work, a leaseholder can be offered a Council tenancy as part of the acquisition of their existing leasehold property. The offer of a tenancy will be reflected in a reduced valuation of the leasehold.

## **5.0 Scheme Viability**

- 5.1 The Council's NCHP was developed on Infill sites on existing Council owned land. Grant allocated under the AHP 2016-21 was paid on a fixed tariff of £100k per property irrespective of property size. The difference between the grant received and the total scheme costs was met by Council borrowing. In exceptional circumstances additional grant could be negotiated for strategically important schemes agreed with the GLA and the Council has experience of this with the Gloucester and Durham sites.



The viability assessment was developed considering a number of key factors.

1. The estimated Construction costs
2. Rental income driving the ability to repay the initial capital costs.
3. An estimate of management and maintenance costs
4. A maximum repayment for the scheme of 60 years.

5.2 The basic viability does not allow for the costs likely to be incurred by delivering more complex schemes. As the Council has become more ambitious in its efforts to continue developing one of the largest Council building programmes in London , more complex sites will have to be considered which will incur additional cost. Watling Gardens is viable using the current viability assessment criteria however Windmill Court remains non-viable using the same criteria.

5.3 The basic viability assessment does not cater for the more complex elements of the development e.g:

- Infrastructure improvements such as landscaping , parking and children's play area
- Buy backs of Leasehold Properties ( RTB sold)
- Improved Community facilities
- Decanting of residents and rehousing on the Estate

5.4 The Council is faced with a number of key considerations when considering viability such as;

- Identify an additional funding resource to meet the viability gap.
- Develop a cross subsidy model similar to that employed by RPs. In short ,develop some of the new units for sale to cover the scheme viability gap.

5.5 Three main options to the delivery of Windmill Court have been considered:

- Option 1- On Estate Decant (Without Landscape and Communal work)
- Option 2 -Off Estate Decant (Without Landscape and Communal work)
- Option 3- On Estate Decant (With Landscape and Communal work)

5.6 The costs associated with each option are outlined in section 9.0 Financial Implications.

## **6.0 Compulsory Purchase**

6.1 CPO Guidance Paragraph 1 (Compulsory Purchase and the Crichel Down Rules) ("the Circular") provides the statutory guidance for the making of a CPO (the Guidance). In accordance with the Guidance, the Council needs to demonstrate that compulsory purchase is used as a measure of last resort and once made, is only enforced after all efforts to acquire by agreement have been exhausted.

6.2 Officers will progress talks with each of the leaseholders with a view to purchasing the leaseholder's interests to achieve vacant possession of the required properties at Watling Gardens and Windmill Court. Securing the leaseholder's interests can ultimately ensure that the redevelopment

at Windmill Court and Watling Gardens can progress without indeterminate delays.

- 6.3 Approving the making of the CPO under delegated authority now, will not result in any reduction in efforts to continue negotiations to achieve vacant possession by voluntary agreement. The CPO is, however, an essential step to confirm the Council's continued and formal support for the scheme
- 6.4 Known interests in the land are currently being compiled any other interests may emerge through land referencing across the red-line area for the proposed CPO.
- 6.5 The Circular states that " compulsory purchase powers are an important tool for local authorities and other public bodies to use as a means of assembling the land needed to help deliver social and economic change. Used properly, they can contribute toward effective and efficient urban and rural regeneration, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life.
- 6.6 The Council should seek to acquire land by negotiation wherever practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail."
- 6.7 The Council should plan a compulsory purchase timetable at the same time as conducting negotiations." This is to reflect the amount of time that needs to be allowed to complete the compulsory purchase process. The guidance goes on to state "it may often be sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations. This will help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations."
- 6.8 There must be a balance struck between ensuring a compelling case in the public interest and that the regeneration project sufficiently justifies interfering with the human rights of those with an interest in the land affected. It reads as follows: *"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 it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected."*
- 6.9 Paragraph 13 of the Circular states – *"If an acquiring authority does not have a clear idea of how it intends to use the land which it is proposing to acquire, and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest... land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss."*
- 6.10 Consideration is given to the human rights implications of the decision to make a CPO in section 10 below.

- 6.11 An example of the circumstances in which CPO may be used by relevant Authorities is summarised as follows:
- To unlock situations where a scheme is being blocked by an owner (or owners) unwilling to dispose of property either at all or only at a price considerably in excess of market value (a ransom situation).
  - To ensure effective negotiations for land assembly where there is a Multiplicity of ownerships and absent landlords.
  - Where there are unknown owners.
- 6.12 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) The wide power in section 226(1)(a) is subject to the restriction under section 226(1A). This provides that the acquiring authority must not exercise the power unless they think that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has administrative responsibility
  - c) 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 plans at Appendices 6 and 7 ;
  - d) acquiring any new interests in land necessary for the delivery of the Scheme either by private agreement or compulsorily;
  - e) arranging for the publication and/or service of any notices required in respect of the CPO, including its implementation;
  - f) ensuring on behalf of The Council that appropriate efforts have been made to reach negotiated settlements before the CPO is made;
  - g) 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;
  - h) implementing the CPO by way of general vesting declaration and or

notice to treat / notice of entry or other means; and

- i) Dealing with any disputes relating to the CPO including as regards compensation and any references of matters to the Upper Tribunal (Lands Chamber).
- j) Dealing with the payment of compensation in accordance with the CPO Compensation Code.

6.13 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.

6.14 It is important that regeneration of the 2 sites 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 could 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 meetings and various publications.

6.15 The initial design proposals for Watling Gardens and Windmill Court have been submitted for Pre- Planning Application discussions with planning officers employed by the Council, outlining how they are likely to determine any subsequent Planning Applications, and changes that are likely to be needed, if any, to give the schemes the best chance of being granted a planning permission. No major issues have been raised so far.

6.16 The developments will also form part of the 2021 – 22 Borough Plan as they will contribute to the pipeline of new homes, which will extend the Council's direct contribution to the increase in housing supply and reduce the number of households in temporary accommodation.

## **7.0 Options Considered**

7.1 Refurbishment of the properties recommended for demolition was considered. Due to potential cost, current layout, characteristics and impact on the overall revised Estate layouts this was deemed not to be an economic option. When similar issues were considered at South Kilburn the cost of bringing up decent homes standard was seen as not providing sufficient value for money. This refurbishment option does not allow the other benefits associated with the proposed development, such as the increase in the number of homes and the ability of existing residents, with a housing need, to move into the new properties. There is no economically viable option to redevelopment, as refurbishment would represent poor value for money in terms of improvements achieved for the cost and wider benefits.

- 7.2 A comprehensive approach which delivers the maximum number of properties allowed within current planning policy guidance delivers maximum benefits across the estates
- 7.3 The net increase in the number of affordable rented homes on the sites (185) would not be achieved without redevelopment.
- 7.4 Overall, it is concluded that there is no credible alternative, which could meet the Council's development objectives for the sites within a reasonable timeframe.
- 7.5 Officers therefore consider that compulsory acquisition is essential to the delivery of the proposed schemes at Watling Gardens and Windmill Court, although it will continue to seek to secure the outstanding interests on the sites by agreement, wherever possible.
- 7.6 Officers are satisfied that there is a compelling case in the public interest for compulsorily acquiring the properties on the sites mentioned and believes that benefits the three schemes would secure in the public interest outweigh the effects of the acquisition on the rights of individuals. It is considered that in this case, the requirements of the guidance, domestic legal requirements and the requirements of the European Convention on Human Rights are met.

## **8.0 Appropriation**

### ***Rights to Light, Access and other Rights***

- 8.1 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.
- 8.2 Following the advertisement of the Council's intention over two consecutive Weeks, there must 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 Community Wellbeing, in consultation with the Lead Member for Housing and Welfare Reforms, will decide whether the appropriation of the open space should occur, having taken into consideration the representations made in response to the advertisement and consultation, together with consideration of matters set out in the paragraph below.
- 8.3 In considering whether or not the Council-owned land within the sites should be appropriated for planning purposes, thereafter engaging the powers conferred by Section 203 of the Housing and Planning Act 2016, the Strategic Director Community Wellbeing, in consultation with the Lead Member for Housing & Welfare Reform 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 purposes it is currently held (this is a prerequisite to appropriation);
- Whether the purposes 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 three sites would be in the public interest;
- Whether the public interest benefits which would arise from the redevelopment of the 3 sites would be sufficient to justify the 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).

8.4 Appropriation of part of the Sites for planning purposes would facilitate the carrying out of the development. There is a compelling case in the public interest to appropriate the sites for planning purposes, as developing the sites would serve the public interest by providing new and improved housing and accordingly, such development outweighs the effect of the appropriation on the private rights of individuals. In addition, the carrying out of the proposed development and improvement of the land within the 3 sites will ultimately contribute to the promotion and improvement of the economic and social wellbeing of the Council's area – and these benefits could not be realised within a reasonable timescale (in the context of the GLA Deadlines) without interference with the private (third party) rights affected by the appropriation and will facilitate the redevelopment of the site for which planning permission is being sought.

8.5 If a third party is able to establish that it has an easement or a right over any of the Three Sites or part of a site (such easements could include but are not limited to a right of way or a Right of Light) then the third party could potentially obstruct the redevelopment and regeneration of the sites 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 three sites 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 sites. 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.

## 9.0 Financial Implications

- 9.1 The total cost of the schemes at Watling Gardens is expected to be circa of £43m, and Windmill Court is between £23m to £26m depending on carrying out Landscape and Communal work options.
- 9.2 The cost of the scheme for the affordable homes will be supplemented by a GLA grant of £100k per home, which equates to £12m for Watling Gardens and £6m for Windmill Court.
- 9.3 The Watling Gardens scheme is financially viable based on LAR rents with payback period in year 53.
- 9.4 The Windmill Court is not financially viable and require additional funding source of £4m to £7m depending on option selected to achieve a payback period of 60 years. This is a high risk scheme even with the additional funding source. The financial appraisal includes 5% contingency, however any additional cost or overspend will make this scheme financially unviable.

	Windmill Court			Watling Gardens
	Option 1 On Estate Decant (Without Landscape and Communal work )	Option 2 Off Estate Decant (Without Landscape and Communal work )	Option 3 On Estate Decant (With Landscape and Communal work)	LAR Rent
No of affordable (LAR Rent)	51	60	51	71
No of affordable (Social Rent)	9	0	9	9
NAIL				45
<b>Total Homes</b>	<b>60</b>	<b>60</b>	<b>60</b>	<b>125</b>
Constructions costs (inc. Fees)	£18m	£18m	£21m	£40m
Leaseholder buy back including compensation	£5m	£5m	£5m	£2m
<b>Total Cost</b>	<b>£23m</b>	<b>£23m</b>	<b>£26m</b>	<b>£43m</b>
Total Grant	£6m	£6m	£6m	£13m
NPV (at Year 60)	£1m	£2m	£1m	£12m
Payback period	No payback within 60 years	No payback	No payback	Year 53

		within 60 years	within 60 years	
Price per home	£252k	£252k	£290k	£273k
Price per home (on cost)	£390k	£389k	£431k	£340k
<b>Financially Viable</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>Yes</b>
<b><i>Additional Funds required to make scheme viable</i></b>	<b>£4m</b>	<b>£3m</b>	<b>£7m</b>	<b>-</b>

- 9.5 The total costs of the CPO settlement is estimated at circa £7m. The cost will be funded from the current approved budget. Please note additional budget will be required for build cost.

## 10.0 Legal Implications

### ***Ground 10A of Schedule 2 of the Housing Act 1985***

- 10.1 The Council is required to obtain approval of redevelopment schemes from the Secretary of State when seeking to re-house secure tenants who will not leave the properties that are due to be demolished in furtherance of redevelopment schemes. Before seeking such approval, the Council is required to consult with affected tenants. Approval from the Secretary of State will enable to Council to use Ground 10A of Schedule 2 to the Housing Act 1985. The paragraph states that the landlord must first:
- a) serve a notice in writing on all secure tenants whose dwellings are affected by the scheme, stating: the main features of the scheme (or the scheme as it will be after a proposed variation to it); that the Secretary of State's approval is to be sought; and the effect of such approval in relation to proceedings for possession of the dwellings;
  - b) inform the tenants that they have a specified period (which must be at least 28 days) in which to make representations to the landlord; and
  - c) Consider any representations during that period.
- 10.2 Unlike a tenanted transfer, however, no formal ballot is required to be carried out. The Secretary of State before giving consent will consider the following:
- a) The effect of the scheme on the extent and character of housing accommodation in the neighbourhood;
  - b) Over what period of time it is proposed that the disposal and redevelopment will take place in accordance with the schemes timetable.
  - c) To what extent the scheme includes provision for housing provided under the scheme to be sold or let to existing tenants or persons nominated by the landlord
  - d) Any representation made to the Secretary of State and, or far as they brought this notice any representation made to the landlord.

### ***Section 105 of the Housing Act***

- 10.3 Section 105 of the Housing Act 1985 places a statutory duty upon the



Council to enable consultation to take place with its secure Tenants on matters of housing management. The Council must accordingly publish details of their consultation arrangements and make them available to members of the public at their principal office.

- 10.4 These arrangements must enable the secure tenants likely to be affected to be informed of the Council's proposals and to make their views known to the Council within a specified period.
- 10.5 Matters of housing management includes those, which in the opinion of the Council relate to the management, maintenance, improvement or demolition of dwelling-houses let under secure tenancies or the provision of services or amenities that are likely to affect its secure tenants. Accordingly, prior to making the decision to serve the notices and further notices there must have been consultation with the residents.

#### ***Demolition Notices***

- 10.6 An initial notice under Schedule 5A of the Housing Act 1985 is a notice served on a secure tenant stating that the Landlord intends to demolish the premises.
- 10.7 Whilst the initial notice remains in force the Council will not be obliged to convey the leasehold interest to the secure tenant. It is important to note that the initial notice does not prevent a claim being made to exercise the Right to Buy. The initial notice served must state that there is a right to compensation.
- 10.8 The period of suspension must not allow the Council more than what is in the circumstances a reasonable period to carry out the proposed demolition but in any case must expire no more than seven years after the date of service of the notice on the tenant.
- 10.9 There is a statutory restriction on service of a further demolition notice in that no further demolition notice may be served during the period of 5 years following the time when the notice comes in to force unless the further notice is served with the consent of the Secretary of State.
- 10.10 Accordingly the Secretary of State when consenting to an extension may impose further conditions.
- 10.11 A final demolition under Schedule 5 of the Housing Act 1985 is a notice stating that the Council intends to demolish the premises and must state a date upon which the notice will cease to be in force.
- 10.12 The final demolition notice state that section 138(c) confers a right to compensation for the secure tenant.
- 10.13 The proposed demolition date must fall within 24 months beginning with the date of service of a notice on the Tenant.

#### ***Compulsory Purchase***

- 10.14 The Council may make a compulsory acquisition under section 226 of the T CPA

- (a) If it thinks the acquisition will facilitate the carrying out of development or redevelopment or improvement on or in relation to the land: or
- (b) Which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

10.15 In order to make an acquisition under (a), The Council must also consider that the development, redevelopment or improvement will contribute to the promotion or improvement of the economic social or environmental well-being of its area.

## **11.0 Human Rights Implications**

11.1 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way that is incompatible with the European Convention on Human Rights. Various convention rights are likely to be relevant to the Order, including:

- Entitlement to a fair and public hearing in the determination of a person's civil and political rights (Convention Article 6). This includes property rights and can include opportunities to be heard in the consultation process.
- Peaceful enjoyment of possessions (First Protocol Article 1). This right includes the right to peaceful enjoyment of property and is subject to the State's right to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.
- Right to life, in respect of which the likely health impacts of the proposals will need to be taken into account in evaluating the scheme (Conversion Article 2).

11.2 The European Court has recognised that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole". Both public and private interests are to be taken into account in the exercise of the Council's powers and duties as a local planning authority. Any interference with a Convention right must be necessary and proportionate.

11.3 The Council is therefore required to consider whether its actions would infringe the human rights of anyone affected by the making of the CPO. The Council must carefully consider the balance to be struck between individual rights and the wider public interest.

11.4 It is considered that any interference with the Convention rights caused by the CPO will be justified in order to secure the social, physical and environmental regeneration that the project will bring. Appropriate compensation will be available to those entitled to claim it under the relevant provisions of the national Compensation Code.

## **12.0 Diversity Implications**

- 12.1 The public sector equality duty, as set out in 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.
- 12.2 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.
- 12.3 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.
- 12.4 The Council, through widening participation, seeks to proactively engage with all local residents living at Watling Gardens, Windmill Court and Kilburn Square and particularly those equality groups who are affected. There has been and will continue to be widespread consultation and community engagement as proposals for the Estates are developed and delivered. The new homes at Watling Gardens, Windmill Court and Kilburn Square are available for all secure tenants directly affected by the redevelopment and decanted to return should they choose to do so.
- 12.5 The Council will ensure it takes action as necessary to mitigate any unintended adverse equality impacts brought to light through the ongoing analysis as the programme progresses, or as circumstances change.

### **13.0 Staffing/Accommodation Implications**

- 13.1 For all three Estates there will be an increase in the number of properties being managed, Watling increases by 83, Windmill by 42 and Kilburn Square by 184. The increases may mean that the Estates need additional resources to carry out their day- to -day management functions. Under the current proposals, the Community space at Windmill Court will be upgraded.

### **14.0 Public Services (Social Value) Act 2012**

- 14.1 The Council is under a 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. Officers have regard to the Act in planning proposed procurements.

## **15.0 Consultation with Ward Members and Stakeholders**

15.1 There have been regular meetings with key stakeholders since November 2019. This series of meetings has included existing users of the buildings as well as Mapesbury and Kilburn ward members.

**Report sign off:**

***Phil Porter***

Strategic Director, Community  
Wellbeing