

	Officer Key Decision 16 May 2022
	Report to the Strategic Director of Regeneration & Environment
Complete Acquisition of 381-397 Edgware Road, Colindale, NW9 6NJ	

Wards Affected:	Kingsbury
Key or Non-Key Decision:	Key-Decision
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	0
Background Papers:	0
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Tanveer Ghani Operational Director, Property & Assets (Acting) Tanveer.Ghani@brent.gov.uk

1.0 Purpose of the Report

- 1.1 In March 2022, Cabinet approved the freehold acquisition of a site known as 381-397 Edgware Road, Colindale, NW9 6NJ for a purchase price of up to £10M.
- 1.2 As part of this approval, Cabinet delegated authority to the Strategic Director of Regeneration & Environment in consultation with the Lead Member for Regeneration, Highways, Planning, and Property to negotiate and agree the terms and thereafter enter into a contract with the seller for the purchase of the site.
- 1.3 Following negotiation and agreement of purchase terms, this report seeks authority to enter into a contract for the freehold acquisition of 381-397 Edgware Road, Colindale, NW9 6NJ.

2.0 Recommendation(s)

That the Strategic Director of Regeneration and Environment in consultation with the Lead Members for Regeneration, Property and Planning:

- 2.1 Approves entry into a contract for the purchase of the freehold interest in the 381-397 Edgware Road, Colindale, NW9 6NJ site for £10m.

- 2.2 Notes that under the contract referred to in 2.1 above, a £1m deposit will be paid upon contract exchange and the remaining £9m of the purchase price will be paid upon completion.

3.0 Detail

381 – 397 Edgware Road Site

- 3.1 The existing site measures approximately 0.41 acres (0.16 ha) in size. It is comprised of two separate titles:
- 381 Edgware Road forms a detached two storey Victorian villa building constructed out of brick and is set back from the road with a concrete hardstanding forecourt to the front.
 - 383-397 Edgware Road forms a three storey interwar building with commercial uses on the ground floor and residential on the upper two floors. The majority of the ground floor building facades fronting Grove Park and Edgware Road are glass fronted, whilst the upper floor facades comprise brick and PVC windows.
- 3.2 The developer is seeking a buyer for this site. In March 2022, Cabinet agreed to purchase the freehold interest of the site at 381-397 Edgware Road for £10m.
- 3.3 Officers have since undertaken the necessary due diligence to ensure the Council is able to acquire a clean and marketable title and that the site has vacant possession. Financial and Legal due diligence has also been carried out.

Planning

- 3.4 In July 2021, 381-397 Edgware Road, Colindale, NW9 6NJ received planning permission to deliver 110 homes and commercial (retail) space in the Fryent area as part of a mixed-use redevelopment. Under the Section 106 Agreement between the developer and the Council dated 2nd July 2021, 13% of these 110 homes will be affordable.
- 3.5 The unit mix and tenure mix of the 110 homes pursuant to the terms of the Section 106 Agreement is outlined below:

	UNITS				TOTAL NSA		AVERAGE NSA	
	TOTAL	1 BED	2 BEDS	3 BEDS	SQ M	SQ F	SQ M	SQ F
PRIVATE	96	53	26	17	5,527	59,493	58	620
SHARED OWNERSHIP	14	3	4	7	976	10,506	70	750
TOTAL	110	56	30	24	6,503	69,998	59	636

- 3.6 The existing planning permission also includes the provision of 606sqm (Gross External Area) of commercial use space across five separate retail units. Condition 15 of the planning permission dated July 2021 states that a minimum

of 563 square metres (Gross Internal Area) of commercial floor space needs to be provided. It is anticipated that these five retail units could be leased out directly by the Council to generate additional income, and/or sold on long-term leases to recoup some of the capital expenditure on the site acquisition.

- 3.7 The Head of Housing Needs has confirmed that the unit mix of the 110 homes will meet the requirements of short and medium term Temporary Accommodation (TA) needs. Subject to planning permission, the Council proposes to change the tenure mix to 100% Temporary Accommodation (TA) with rents capped at Local Housing Allowance (LHA).

Next Steps

- 3.8 Subject to completing the freehold acquisition of this site, the Council will then procure its delivery team including a design and build contractor to deliver this mixed development as part of the New Council Homes Programme (NCHP).

4.0 Financial Implications

- 4.1 The analysis assumes that 110 homes will be let at London Housing Allowance Rent (LHA) rates and held within the Council's General Fund.
- 4.2 The purchase price agreed for the site is £10m (excluding Stamp Duty Land Tax and disbursements).

Main Assumptions

- 4.3 The following assumptions have been made in undertaking the financial viability:
- Rents assumed at LHA rates for all TA units
 - Rent increase assumed at CPI plus 1%
 - CPI assumed at 2%
 - Housing management at £600 and maintenance cost at £600, per property
 - 2% Bad debt and 2% Void
 - Service charges will be cost neutral
- 4.4 The Council is reviewing the optimum tenure mix to achieve the most suitable outcome. The addition of any affordable units will enable the Council to secure a 100% Stamp Duty Land Tax (SDLT) relief based on the following assumptions that will need to be fully tested along with the Council's tax advisors and HMRC:
- a) the Council is deemed to be a relevant housing provider that is controlled by its tenants; and
 - b) the Council will make an application to the GLA for some form of affordable housing delivery grant The Council will review exact tender mix to ensure the most suitable outcome.

5.0 Legal Implications

5.1 Section 120 of the Local Government Act 1972 provides that

For or the purposes of:

- (a) Any of their functions under this or any other enactment; or
- (b) The benefit, improvement or development of their area.

The Council may acquire by agreement any land, whether situated inside or outside their area.

5.2 Section 227 of the 1990 Act provides that the Council is able to acquire land for planning purposes

In considering whether the Council is able to engage section 203 powers pursuant to the 2016 Act in relation to the Property the Strategic Director of Regeneration & Environment, in consultation with the Cabinet Member for Regeneration, Property & Planning should consider:

- Whether the land is already owned by the Council.
- 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 site would be in the public interest;
- Whether the public interest benefits which would arise from the redevelopment of the site 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 pursuant to S226 of the 1990 Act;
- Whether any related financial liabilities of the Council would be indemnified; and
- Whether prior consultation had taken place with the third party owners.

The purchase of the proposed Property will ultimately contribute to the promotion and improvement of the economic and social wellbeing of the Council's area – and it is believed that these benefits may not be realised within a reasonable timescale without interference with the private (third party) rights.

- 5.3 If a third party is able to establish that it has an easement or a right over the Property Land or part of the Land (such easements could include but not limited to a right of way or a Right of Light) then the third party could potentially obstruct the redevelopment of the Property by applying for an injunction to prevent the delivery of the development. The effect of the resulting engagement of the powers in section 203 of the 2016 Act , is therefore to facilitate the development and improvement of the Property despite interference with existing third party rights over the Property (subject to the payment of compensation as required by statute). 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
- 5.4 Section 204 of the 2016 Act provides for compensation payable to third parties in respect of the diminution in value of the third party's land. A specialist valuer will need to be undertake assessment to confirm the amount of compensation payable in respect of any such losses.
- 5.5 Section 79 of the Housing Act 1985 provides that the tenant of a council property will be a secure tenant provided that in accordance with section 81 of the Housing Act 1985 the dwelling is the tenant's main or principal home. Accordingly, the provisions of the Housing Act will entitle the secure tenant to purchase their home under the right to buy scheme. The Tenancy Agreements will however need to ensure that the tenancy agreement provides for a non-secure tenancy by virtue of schedule 1 of the Housing Act 1985.
- 5.6 Paragraph 3.6 of the report envisages that the retail units may be leased directly by the Council to generate income or sold on 125 year lease The Council has the power to dispose of property under Section 123 of the Local Government Act 1972 for the best price reasonably obtainable (This type of disposal would be covered under the General Consents and would not need specific consent under Circular 06/03).
- 5.7 The Council legal department will undertake all the necessary due diligence Prior to exchange of contracts. Accordingly, all the necessary searches and Title information will be examined prior to entering into the contract to ensure that the Council will acquire the property with good and marketable title.
- 5.8 Appropriate authority will need to be sought for the procurement and award of contracts for relevant consultancy services and for the development of the site.

6.0 Equality Implications

- 6.1 The Council must, in the exercise of its functions, have due regard to the need to:
- a) Eliminate discrimination, harassment and victimisation;
 - b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 6.2 Pursuant to s149 Equality Act 2010. This is known as the Public Sector Equality Duty.
- 6.3 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.4 The purpose of the duty is to enquire into whether a proposed decision disproportionately affects people with a protected characteristic. In other words, the indirect discriminatory effects of a proposed decision. Due regard is the regard that is appropriate in all the circumstances.
- 6.5 The initial analysis indicates that the acquisition and development of this will have positive impacts on all groups falling within a protected characteristic. Through ongoing equality impact assessment, the officers will continue to monitor the reach and the targeting of the engagement, and the impact of the proposed development plan on residents with protected characteristics, considering and implementing measures to mitigate negative impacts and maximise positive impacts.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 The March 2022 Cabinet paper that sought approval to acquire this site, was circulated to all Ward Members.
- 7.2 Follow up consultation with the Lead Member for Regeneration, Property and Planning has taken place prior to making this decision in relation to the Recommendations.
- 7.3 As part of the capital delivery of the Council's development of this site, further engagement will be undertaken with Ward Members and key stakeholders to address any issues as/when necessary.

8.0 Human Resources/Property Implications (if appropriate)

- 8.1 There are no further property and/or human resources implications in relation to this report.

Related documents:

7 March 2022 Cabinet Paper

Report sign off:

Tanveer Ghani

Operational Director of Property & Assets (Acting).