



Cabinet
14 November 2022

**Report from Corporate Director,
Resident Services**

Update on the supply of New Affordable Homes

Wards Affected:	All
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>	Part Exempt: Appendices 1,2, 3 & 4 contain exempt information as classified in Para 3 of 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:	Five Appendix 1 (Exempt) Schemes in Contract Appendix 2 (Exempt) Outcome of testing the impact on viability of unit mix changes for schemes not yet in contract Appendix 3 (Exempt) Wembley Housing Zone Appendix 4 (Exempt) South Kilburn Regeneration Financial Summary Appendix 5 St Raphael's map
Background Papers:	None
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1. Purpose of the Report

- 1.1. The purpose of this report is to provide an update on the New Council Homes Programme (NCHP) and outline current pressures on schemes, both in contract and in the pipeline. This report specifically outlines viability gaps across 10 schemes, which are not yet in contract and sets out options for cross subsidisation where possible for the Council's consideration.
- 1.2. It also includes an overview of the three major projects being led by the Council, South Kilburn, Wembley Housing Zone and St Raphael's Estate:
 - For South Kilburn, this report shows how current market pressures may impact regeneration and presents an alternative option, which the Council could utilise in order to mitigate schemes that become unaffordable;
 - For Wembley Housing Zone developer procurement, the budget for which was agreed by Cabinet August 2021, and for which bids are due in October 2022; and
 - For St Raphael's, consideration of the current financial viability of phase one.
- 1.3. Throughout this report, the options presented for consideration take into account the growing pressure on the Council to meet increasing demand on the housing needs service and the implications of this on the Council's ability to fulfil its statutory duties but also the financial pressure created as a result.

2. Recommendations

- 2.1. That Cabinet note the content of the report and agree the following:
 - Officers to convert schemes to include alternative tenures, either shared ownership or open market sale, with a view to making schemes viable and prioritise delivery of larger homes;
 - Officers to utilise conversion in larger schemes to address financial pressures on schemes currently in contract;
 - Officers to utilise conversion in larger schemes in order to address viability gaps for schemes not yet in contract but would provide much needed larger family sized accommodation.
- 2.2. That Cabinet note the update provided for the Wembley Housing Zone.
- 2.3. That Cabinet note the update provided for St Raphael's estate.

- 2.4. That Cabinet approve all new planning permission applications submitted as part of the New Council Homes Programme (NCHP) going forward commit to 50% affordable housing with a view to delivering above this wherever possible.
- 2.5. That Cabinet approve a capital budget allocation of £44m (including 10% contingency) for the development at Edgware Road.
- 2.6. To delegate authority to the Corporate Director, Resident Services, in consultation with the Corporate Director for Finance & Resources and Lead Member for Housing, Homelessness and Renter Security, to agree pre-tender considerations, invite tenders, evaluate tenders and thereafter to award development/construction contracts with developers/contractors for Edgware Road to the value of £40m + 10%.
- 2.7. That Cabinet approve the use of Modern Methods of Construction for a minimum of 25% of all homes built under the second Homes for Londoners Programme as required by the GLA.
- 2.8. That Cabinet agree to commission a report into shared ownership demand in Brent and examples of best practice in order to influence a new 'Brent shared ownership offer'.
- 2.9. To delegate authority to the Corporate Director, Resident Services, to make an application to seek Secretary of State's consent under section 19 of the Housing Act 1985 to appropriate any part of St Raphael's Estate necessary to progress the development for planning purposes so that part of the Estate is no longer held for the purpose of Part II of the Housing Act 1985 as set out in Appendix 5.
- 2.10. To delegate authority to the Corporate Director, Resident Services in Consultation with the Lead Member for Housing, Homelessness and Renters Security to consider the impact of the Public Sector Equalities Duty implications and to ensure compliance with that duty and to consult with those affected by the appropriation of areas within St Raphael's Estate and to consider the responses of the consultation and thereafter and where appropriate to appropriate the relevant parts of the St Raphael's Estate for planning purposes in order to facilitate the development pursuant to section 122 of the Local Government Act 1972 as set out in Appendix 5.
- 2.11. To delegate authority to the Corporate Director, Resident Services in consultation with the Lead Member Housing, Homelessness and Renters Security to appropriate part of the open space at St Raphael's Estate necessary to progress the development pursuant section 122 (2A) of the Local Government Act 1972 and prior to doing so to advertise for two consecutive weeks in a newspaper circulating in the area in which the land is situated and consider any objections to the proposed appropriation which may be made to them.
- 2.12. To approve the reduction of the affordable homes to be built at Neville and Winterleys on behalf of the Council from 101 units to 95 units in line with the

proposal set out in section 6.5 to 6.7 of this report. To delegate authority to the Corporate Director, Resident Services, any further changes up to a 5% tolerance.

3. Context

- 3.1. The Council set out its ambition to play a leading role in tackling the housing crisis by building social housing and taking a more active role in shaping developments to genuinely meet the housing need of Brent residents.
- 3.2. This approach has proved successful in that the borough is seeing more family sized accommodation being developed. However, the impact of Covid-19 and now the cost of living crisis has resulted in a continued increase of demand on the housing needs service. The Housing Needs service has seen a 22% increase from families and single people who are either threatened with homelessness or homeless approaching the Council. The ability to secure suitable accommodation for these residents is a legislative requirement the Council must fulfil.
- 3.3. One particular cohort, which is becoming a greater risk is those households who require an adapted property. As reported in September 2022, there were roughly 68 households needing an adapted property and these types of homes are in short supply in both the social and the private rented sector. It should be noted that the risk of not being able to fulfil the duty of providing suitable accommodation to those persons whom the Council has accepted a duty to provide temporary accommodation could involve having to defend judicial review proceedings in which the Court can order the Council to find and provide a suitable property as required under Part VII of the Housing Act 1996 within a set period of time (e.g. 3 months) and the consequences of not doing so could result in having to pay a significant sum in damages and reputational damage.
- 3.4. Another risk could involve an investigation and adverse findings from the Local Government and Social Care Ombudsman, which involves a longer complaint process and could also result in reputational damage and the payment of compensation.
- 3.5. Due to the demand on the Housing Register, typically any homeless household that approaches and is accepted as eligible, homeless and in priority need would be provided with Temporary Accommodation (stage 1) and then if the main duty is accepted they would be offered Temporary Accommodation (stage 2) or made an offer in the private rented sector.
- 3.6. There are significant changes occurring in the housing market that are reducing both the supply of social homes for rent and affordable rented homes within the Private Rented Sector (PRS) (rent levels set at the Local Housing Allowance levels). For social housing providers, many are reporting having to rationalise their development programmes in order to meet new building safety legislation and net zero carbon targets. One large Housing Association that operates in Brent confirmed their organisation has realigned its business plan to refocus on bringing existing homes up to standard rather than building new homes. This is

a positive step for Brent residents already living in social housing but does mean the potential for new supply coming through is reduced.

- 3.7. For the PRS, landlords having experienced the risks of renting first hand throughout the pandemic, coupled with rising mortgage rates including those with buy to let mortgages and growing pressures for standards within the rented sector means landlords are now exiting the market. The lack of availability does then pose the risk of households competing to rent a property and therefore bidding wars and price increases could follow making this accommodation even less accessible for those on a limited income.

4. New Council Homes Programme (NCHP) progress update

- 4.1. The Council has a current target to develop 1,000 new council homes by 2024. To date, the Council has developed and let 684 new Council homes to Brent households and there are a further 639 homes being built on site, all of which are currently on track to be completed before 2024, meaning the Council will exceed its target. Due to the success of the New Council Homes Programme (NCHP) and the evident need for affordable housing in Brent, the Council committed to delivering an additional target of 700 homes by 2028 and was awarded a further £111m in grant funding from the Greater London Authority (GLA) to deliver these homes.
- 4.2. Whilst the Council is confident in its ability to continue delivering affordable homes for Brent residents, there are social and economic factors, which are increasingly placing pressure on both current schemes that are on site and those in the Council's pipeline. Rising inflation, a continued shortage of labour and materials and events such as the Covid-19 pandemic and the war in Ukraine have had an adverse effect on costs and therefore the financial viability of each scheme. The Government reported an increase of 23% on materials such as steel, timber and concrete last year alone. It should be noted that in 2019/20, the Council was using a build cost of circa £2000 - £2500 per sqm to test financial viability. For 2022/23, the Council is now using a build cost of £3000 - £3500 per sqm to test viability of schemes in the NCHP.
- 4.3. For schemes that are currently in contract and being delivered, the Council is already seeing contractors seeking to re-negotiate due to the cost of materials with the Federation of Master Builders reporting 74% of builders feeling pressure to pass increased costs onto the consumer and generally increasing their prices.
- 4.4. For those not yet in contract, the Building Cost Information Service is currently reporting an increase of 6.5% in the Tender Price Index. From a procurement perspective, this risk could be somewhat offset by using a single stage tender. This is where the Council issues a tender for a whole scheme with all relevant information fixed and is intended to secure a competitive build price. The market however is overwhelmingly favouring a two stage tender process, which means for the Council the full details of the project are finalised in collaboration with the contractor using a Pre-Construction Services Agreement and then price is agreed prior to formal entry into the construction contract. The two-stage

process is currently being favoured as contractors have less certainty of costs and where costs are agreed, they are unable to hold these prices for extended periods of time.

- 4.5. Each of these challenges is a risk and places pressure on the NCHP. There are however actions the Council can take to protect the ability to continue delivering much needed affordable homes.
- 4.6. Previously, when a scheme was appraised to determine whether it was financially viable or not, the Council would model it against a 60 years pay back and if the pay back was positive it would be considered financially viable. In June 2022, the Council reduced this payback period to 55 years to mitigate against the expected cost variations as a result of the two-stage tender process and rising costs during the project build.
- 4.7. This change in payback period however will not resolve schemes not yet in contract that are showing a deficit. This means the Council must now consider cross subsidising the much needed social housing by converting some homes to other tenures including shared ownership (SO), open market sale (OMS) or rents at Local Housing Allowance via the Council's wholly owned subsidiary company i4B. Appendix 2 provides further details on the scale of conversion required and what this would mean for the number of homes delivered under the NCHP. Members already agreed this methodology for Watling Gardens. Watling Gardens now includes 24 SO homes which ultimately protected the Council's ability to continue delivering 45 homes for Extra Care, 56 homes at London Affordable Rent (12 of which are actually set at social rents for returning residents).

Schemes in contract

- 4.8. An initial assessment of the most recent project costs of schemes currently in contract was carried out as part of this reports full review of the NCHP. This assessment found an initial gap of £22.7m as shown in Appendix 1. There are social and economic factors that are placing financial pressures on our mixed development schemes such as the Learie Constantine Centre, Preston Community Library and Brent Indian Community Centre redevelopments. Rising inflation, a continued shortage of labour, the Covid-19 pandemic and war in Ukraine have had an adverse effect on construction costs. Energy intensive materials have been severely impacted by recent energy price rises, with steel, cement, bricks and glass particularly affected. All of these factors have contributed to increased projects costs whereby the housing provision can no longer cross subsidise the delivery of the new community facility provision(s). Therefore a further review has been carried out and £10m of Strategic Community Infrastructure Levy (SCIL) has been identified for schemes that are eligible. Subject to Cabinet approval, this means there is now a reduced gap of £12.7m for schemes currently in contract
- 4.9. Once the Council has been through procurement for a new build scheme, it is expected that costs should remain in keeping with the price submitted at the point of tender. Any cost increases are a direct result of post-contract variations,

some of which are standard practice. An example of this is additional requirements for adapted homes, which could not possibly be identified at the point of specification due to each household having bespoke needs. Another example of a reasonable variation is unforeseen complexities with a site such as contaminated ground conditions and/or unexploded objects, which means additional unplanned work is required to deliver the specification. Unreasonable variations are factors that could have been avoided such as the specifications being incorrect or needing to change or the contractor not pricing the job correctly. The Council does have controls in place to avoid these types of variations, such as experts who assess tender prices to identify any concerns such as abnormally low pricing.

- 4.10. Due to the volatile market, labour and material shortages, supply chains are struggling to hold their prices for long after the tender period. This is largely what has contributed to the £12.7m viability gap. This can be somewhat mitigated going forward by strengthening the tender documents and subsequent contracts to include fluctuation clauses where reasonable and expediting contract negotiations so that contracts are signed quickly and therefore prices locked in.
- 4.11. There are however concerns that even after build costs being locked once the contract is signed, prices can and are continuing to rise. This is specifically for materials such as timber, concrete and steel. If these costs increase result in the contractor being at a loss, they will approach the Council to re-negotiate and if a compromise is not achieved, it could result in the contractor withdrawing from that scheme.
- 4.12. For all NCHP projects on site, the Council has appointed an Employers Agent (EA) and a Quantity Surveyor (QS) to administer the build contract and ensure that any variations to the original form of contract (including time and cost implications) are approved by Brent prior to any formal instruction. Furthermore, it should be noted that all contractor invoices are validated by the EA/QS prior to payment to ensure accuracy with on-site delivery programme and this helps reduce any disagreements when settling the final account with each appointed contractor.
- 4.13. Tier 1 contractors (e.g. Wates, Kier, Hills Partnership, United Living, Willmott Dixon) deployed on schemes such as Stonebridge, Honeypot Lane and Preston Community Library have been instructed to pre-order large quantities of key material such as steel, timber, windows, glass at the earliest opportunity and store them on site/at their depots. This bulk purchase approach helps avoid time delays for getting material to site and allows contractors to avoid constant cost inflation.
- 4.14. The contractor appointments for the Learie Constantine Centre, Brent Indian Community Centre and Preston Community Library have been undertaken via the NEC3 Fixed Price Form of Contract. This allows Brent to enter into a fixed price contract for construction and variations must be administered via the Early Warning Notice (EWN) especially when dealing with any risk that could have an impact on the time, cost and quality of a project.

- 4.15. All other on-site projects have been procured using the JCT Design & Build Contract. In order to address any contract variations that could be attributed to Covid/Brexit, the Council has agreed a standard clause amendment that allows time extensions for the contractor without any further cost liability on the Council. To further protect the Council, a review of the JCT Design and Build Contract will be carried out to ensure they are fit for purpose given the increase of inflation and energy costs.
- 4.16. Section 4.17 onwards outlines current schemes in the pipeline and the opportunity to convert homes from London Affordable Rent to alternative tenures such as shared ownership. It is proposed to meet this £12.7m gap, that the Council maximise conversion on larger schemes in the NCHP pipeline to not only meet the viability gap of the individual scheme but also the gaps created by schemes currently in contract.

Schemes not yet in contract

- 4.17. Ten of the schemes within the NCHP are not yet in contract. The Council has already applied a 10% contingency to each of the schemes estimated build costs in order to mitigate against inflationary rises when assessing their viability. All ten of these schemes are unviable in their current form.
- 4.18. To better understand the Council's options, officers have reviewed all 10 of these schemes to explore possible options for making schemes viable. This in real terms means the conversion of some social rented homes to shared ownership or other tenures in order to cross subsidise the scheme.
- 4.19. Appendix 2 sets out a summary table of this assessment and overall, there are four schemes which allow for conversion of some homes (50% or under in keeping with planning requirements) and result in a positive net present value which mean they are financially viable. These schemes are:
- Kilburn Square
 - Windmill Court
 - Seymour Court
 - Rokesby Place
- 4.20. Across these four schemes, there were 204 affordable homes due for delivery either at Social Rent or London Affordable Rent. This conversion would see this number reduce to 145 homes for London Affordable Rent and 59 homes for Shared Ownership.
- 4.21. For Kilburn Square and Windmill Court, the inclusion of either SO or OMS would work well with both schemes having excellent transport links and part of a larger development. These homes would be solely contained to 1 and 2 bedroom properties.
- 4.22. Seymour Court is a much minor scheme totalling five homes. It's make up includes; 2 x 2 bedroom, 2 x 3 bedroom and 1 x bedroom homes. In order to protect the much needed family homes, the 2 bedroom properties would be

converted to SO. For Seymour Court, the conversion of the 1 x 1 bedroom and 1 x 2 bedroom property did not lead to a viable scheme which is why both proposed properties for conversion were included in this test.

- 4.23. For Rokesby place however, though viable if one property is converted, as a scheme it is just 2 x 4 bedroom homes meaning the Council would need to convert one to gain one. Additionally, shared ownership at 4 bedroom home price would likely not be a price someone seeking an affordable home ownership product could pay. If this scheme was to go ahead therefore, the Council would be better considering other options such as OMS or whether it could be made viable through i4B, as they are able to charge a higher rent. Large family sized homes at low rent, remain a priority for the Council, as other social landlords are very unlikely to consider building them and we continue to have much need for them.
- 4.24. There are three schemes that the conversion option does not work for, these are:
- Edgware Road
 - Morland Gardens
 - Lidding Road
- 4.25. Edgware Road is a Temporary Accommodation scheme and therefore already set at higher rent rates i.e. Local Housing Allowance. Due to the type of accommodation and the use of the building, options such as shared ownership are also not practical. Currently the scheme (as shown in Appendix 2) is showing a deficit, this is inclusive of the 10% contingency. Whilst there is a deficit, there is still an argument for the Council to consider plugging the gap as there will be financial implications elsewhere by not building the additional 110 temporary accommodation homes. The Housing Needs service in September 2022 reported on increased pressure from residents experiencing homelessness. Due to increased demand and lack of supply in the private rented sector, the Council's state of the art temporary accommodation buildings Knowles and Anansi House are full and residents are not moving on as intended meaning the Council is becoming increasingly reliant once again on bed and breakfast hotels to provide emergency accommodation. Bed and Breakfast hotels meet the immediate need for a roof over a residents head, but in terms of quality of life, extended stays in this type of accommodation only exacerbate the poor living circumstances and often push residents into further poverty due to the lack of cooking facilities meaning their day to day cost of living is still high. The Housing Needs service currently has a significant reserve fund, bearing in mind the increasing costs of providing temporary accommodation, it might be prudent to use some of the reserve fund to plug this gap. The current financial appraisal shows that the Council requires circa £40m to build out the Edgware Road Temporary Accommodation scheme. As with all schemes now in the pipeline the Council is also adding 10% to these costs as a contingency.
- 4.26. Similarly for Morland Gardens, the conversion of 32 of the 65 homes to SO results in a deficit. Based on property values, alternative options such as OMS may not reduce the viability gap as property prices in this location are similar to the build cost meaning the Council would be better off purchasing properties in

this particular area than building them. This scheme was originally conceived as a mixed development to provide a new teaching and learning facility for Brent Start, affordable housing, a community café and affordable workspace to support students in their learning and subsequent business opportunities. It should also be noted that this particular scheme, though technically not in contract, is in a Pre-Construction Service Agreement (PCSA). The Council will need to consider opportunities to value engineer the scheme during the PCSA process. This potentially could remove certain provisions such as the community café or affordable workspace and increase the amount of housing, subject to planning consent. Officers will continue to monitor the viability of the scheme and update Members during the PCSA process.

- 4.27. For Lidding Road, this is a minor development scheme of 8 homes consisting of 1 x 1 bedroom, 2 x 2 bedroom and 5 x 3 bedroom homes. In the conversion test, four properties were converted to SO, the 1 x 1 bedroom, 2 x 2 bedroom and 1 x 3 bedroom property. As highlighted in Appendix 2, the results showed a scheme deficit. For Lidding Road, the Council could cross subsidise through a larger scheme that is viable e.g. Windmill Court, which still has a further 14 x 1 bedroom properties even after conversion in order for the Council to maximise the number of 3 bedroom family homes in the programme.
- 4.28. The final three schemes presented in Appendix 2 are one off homes to be built on existing estates, these are:
- Townsend Lane
 - Sutherland Court
 - Minterne Road
- 4.29. Townsend Lane and Minterne Road are 1 x 4 bedroom home schemes and Sutherland Court is a 1 x 3 bedroom home scheme. These schemes are at an early stage of the process and currently show a deficit. Whilst this is a financial pressure on the programme, there is an argument to be considered that these properties could be designed and adapted to meet the needs of a specific household that would otherwise not be available on the open market. Therefore saving money on the cost of providing temporary accommodation and/or additional care packages for these households.
- 4.30. As demonstrated, the majority of schemes outlined above can become viable through a conversion of homes to an alternative tenure such as shared ownership and those that do not achieve viability; there is a need to proceed as not delivering schemes such as the Edgware Road Temporary Accommodation scheme will lead to even greater costs elsewhere in the Council. Any changes to schemes in the pipeline, particularly those with planning permission will require a variation to the planning permission to enable conversion of tenure to take place. Whilst the Council will continue to maximise the amount of affordable housing it directly delivers through the NCHP, going forward, it is recommended that all schemes are submitted in-keeping with the policy compliant requirements i.e. 50% affordable housing, 50% other tenures. This would allow the Council to utilise all tenures including OMR (subject to legal constraints) and OMS to achieve the greatest return across the NCHP. Where

it is achievable to do so, the Council will deliver above 50% as the priority remains to deliver affordable homes for Brent residents.

Alternative routes for delivering New Council Homes

- 4.31. As building costs begin to rise, the Council is actively pursuing the acquisition of section 106 (s.106) packages and where possible, negotiating with developers to increase the number of affordable homes. There are number of opportunities currently in the pipeline and these opportunities can provide the Council better value for money than direct development. This is however dependent on the scheme meeting the housing need and the cost of purchase.
- 4.32. Where viable and suitable, it is recommended the Council includes acquisition of s.106 packages as a more prominent source of new Council homes as this will reduce the risk of increasing build costs on the Council. Additionally, as 4.33 outlines Registered Providers' are reviewing their own development programmes meaning there will be less competition in the market for s.106 packages.
- 4.33. As part of the £111M grant, the GLA requires that 25% of the 701 homes to be delivered must be through Modern Methods of Construction (MMC). The main benefit of MMC is that homes can be built in a matter of weeks as opposed to years meaning residents who need homes are housed significantly more quickly. Financially, this means the Council is able to collect rent on these homes much earlier than if the development was built through traditional methods. It is also argued that MMC delivers greater consistency in both quality and compliance as the homes are constructed offsite in a factory controlled setting minimising any room for error. The final key benefit of MMC is the level of sustainability achieved, with many MMC homes there is little waste as the requirements for each element are pre-calculated and developed using precision engineering. It is recommended that MMC be utilised for both small and large infill schemes as it minimises disruption experienced by existing residents.

Delivery against Brent's targets

- 4.34. As stated in section 4.1, the Council has already built and let 684 homes and there are a further 639 homes already on site being developed. This means the Council is already on track to deliver 1323 homes by 2024. Appendix 2 focuses on the confirmed pipeline totalling 392 homes and based on commentary provided from section 4.17, the overall number of homes for rent that could be delivered would reduce to 333 new Council homes.
- 4.35. This report focuses on 10 sites not yet in contract as they are fully designed schemes and give a great understanding of what conversion would mean. There is a larger pipeline of sites on the Council's programme at various stages and this number at present totals 2,316 homes. Based on the success to date and the extensive pipeline, the Council's overall target to directly deliver 1,700 homes for affordable rent is possible. Once the Council has a committed position on the use of other tenures to cross subsidise schemes, then it is

recommended that the programme as a whole is reviewed and those schemes that work best when converting some homes should be prioritised for delivery first (subject to grant conditions from the GLA).

- 4.36. Registered Providers (RPs) continue to play a significant role in the delivery of new affordable homes in the Borough. The table shows the new homes that are anticipated to be delivered over the next two financial years from RPs funded by the GLA.

Table one: Registered Providers number of homes expected to be delivered in Brent.

Developer	Financial Year 22/23	Financial Year 23/24
Arneway	0	6
Clarion	226	0
Home Group	0	121
L&Q	176	0
MP Living	0	13
Network	156	158
Octavia	125	0
OPDC	52	0
PA Housing	40	0
Quintain	0	66
Sapphire Housing	0	19
Total	775	383

- 4.37. Whilst these homes are onsite and likely to be delivered, through the Council's relationships with Registered Providers (RPs), as previously mentioned, it is apparent many are reviewing their future development programmes and prioritising investment in existing stock as well as seeking to navigate the challenges affecting the NCHP. It should also be noted that these homes are a mix of affordable rent and home ownership.
- 4.38. It should therefore be noted that if the Council does agree to include alternative tenures such as SO, then these homes would still contribute to the overall target of 5,000 affordable homes in Brent by 2028.
- 4.39. Where Brent has proved successful in shaping the supply of homes for affordable rent offer to meet genuine need, this can be replicated for shared ownership. The Affordable Housing and Partnerships service has played an integral role in developing a clear evidence base that captures current and future demand and the types of affordable housing to meet need. It is therefore recommended that the Council also commission a report specifically looking at the demand and interest in shared ownership inclusive of best practice in the sector in order to ensure this is a product of both interest and benefit to Brent residents.

5. Wembley Housing Zone: Cecil Avenue and Ujima House

- 5.1. Following Cabinet resolution in August 2021, officers have advanced competitive procurement of a delivery partner for the Wembley Housing Zone (WHZ). The vision and opportunity is to regenerate the eastern stretch of Wembley High Road. High quality housing-led development, commercial and community uses, and an improved public realm, will link the established Wembley Central town centre with the new Wembley Park.
- 5.2. Procurement is currently ongoing and an update for Cabinet is provided at (Exempt) Appendix 3 – Wembley Housing Zone.

6. Regeneration of South Kilburn

- 6.1. The South Kilburn regeneration programme is approximately 50% complete and will deliver over 2,400 new high quality homes, of which will be 50% affordable homes. The programme aims to transform the area into a sustainable and thriving neighbourhood creating a real sense of place and belonging.
- 6.2. Ten blocks have already been delivered or are on site, and seven sites remain to be developed, including the provision of a new primary school building, enhanced public realm and open spaces.
- 6.3. In August 2020, Cabinet agreed that Brent Housing Management were to be the preferred provider of social housing in future South Kilburn developments rather than the current contractual arrangement, whereby developers partner with a Registered Provider for the management of the affordable homes.
- 6.4. If the Council is to be affordable housing provider in future schemes, there are cost implications, as the Council has to pay for the construction of the affordable homes. And enter into a development agreement in relation to the construction or alternatively enter into an agreement for sale and purchase of the built homes. Some assumptions have been set out below to illustrate what these costs are likely to be with an inflation scenario that increases the price by 10%. See Appendix 4 (exempt) and please note costs have been based on a blended unit price of £186,463.88, recently used at Neville and Winterleys.
- 6.5. A report was taken to Cabinet on the 11th April 2022 where Cabinet approved the acquisition of 101 affordable homes at 1 – 8 Neville House, 1 – 64 Winterleys, 113 - 128 Carlton House and Carlton Hall (“NWCC”). The entire development is delivered under the terms of a Development Agreement (DA). The mechanism under which the council will purchase the affordable homes is the Affordable Homes Sales Agreement, this is appended to the DA.
- 6.6. Since the recent acquisition of 235 units at Unity Place by the Council, the vast majority of residents who needed a 1 bedroom property have been rehoused. This means those who remain in South Kilburn and require decanting need family sized homes.

- 6.7. The forthcoming NWCC scheme creates an opportunity for the Council to increase the number of larger homes by reducing the number of 1 bedroom properties within the scheme. Since Cabinet decision on 11th April 2022 this has been further refined and is outlined in the table below:

	Original consent	Current scheme	Proposed scheme updated
1B2P	52	30 (-22)	18 (-34)
2B4P	38	38 (0)	37 (-1)
3B6P	20	24 (+4)	31 (+11)
4B6P	2	9 (+7)	9 (+7)
Total	112	101	95

- 6.8. Procurement present 2 options which allow a Developer to partner with:
- Brent Housing Management to be the registered provider, or
 - A Housing Association.
- 6.9. Option b would be at zero cost to the Council and will not jeopardise any promises made to residents regarding housing delivery. It should be noted however, once handed over management of South Kilburn becomes increasingly difficult with more providers, specifically management of the public realm and so such a decision would not assist in resolving ongoing issues between housing providers.
- 6.10. Ability to purchase the affordable schemes/pay for the construction of the units (at the Developers risk) in South Kilburn, presents an opportunity for the Council. Based on the current blended rate (as stated in 6.4 above), it also presents an opportunity to deliver these homes at a lower cost compared to other models of delivery.
- 6.11. Based on the relatively lower cost and the opportunity to reduce housing providers on the estate, to mitigate the issues identified in 6.9 above, it is proposed that the Council continues to be the preferred social housing provider on the estate.
- 6.12. One way of mitigating the programme management and financial challenges to future developments is to move from the current model of procuring different developers for each site, to a single delivery model. This is also based on recent experience of it being more challenging to attract delivery partners and when they have been appointed, there has often been a requirement, (based on their sales expertise) to amend schemes via revised planning consents, which adds to delivery timescales. Viability is becoming more challenging due to a combination of market uncertainty, absence of GLA grant and inflationary linked cost pressures.
- 6.13. These factors, along with looking for efficiencies across the programme, has led officers to conclude that there are financial risks to the ability of the programme to 'pay for itself' and the current procurement approach is a factor in this. As a result, the procurement of a single developer partner for the

remaining phases is being considered. A high level view from Deloitte and early soft market testing has concluded that the single delivery partner model provides a suitable option for delivering the outstanding phases of activity. Authority to proceed with procuring a single delivery partner is being progressed.

7. St Raphael's Estate

- 7.1. The infill masterplan consists of clusters of new homes in the north and south of the estate, facing the river, along the western edge of the existing homes, in addition to homes in underused pockets of land within the estate. The total scheme (phases 1.2 & 3) is designed to deliver 370 new homes; 334 flats and 36 houses but the detail is subject to change as the phased design is developed.
- 7.2. Initial build costs estimates for phase 1 and the community centre have been provided by Bailey Garner (Cost Consultants and employers agents for the scheme) and are reported at circa £100M. This is a viability gap of £60m for phase one alone and whilst rationalising the design and the scheme could reduce this cost somewhat, it is the groundworks and foundations required to make the phase 1 site fit for development that creates the biggest pressure. These costs are not fully confirmed and only when actual tenders are issued and contractors respond would the Council know the full extent of the cost to deliver this scheme.
- 7.3. The Council has committed £30m to the improvement of the existing St Raphael's estate and delivering these improvements as quickly as possible is a priority. The delivery of these works are intertwined however with the ability for the Council to deliver new Council homes also.
- 7.4. If the Council were to proceed in getting planning permission for the estate improvement works independently and deliver these works whilst the market remains volatile, planning permission for the homes is then compromised. This is because the homes result in a loss of open space and if delivered post the estate improvement works under a separate planning application, the Council would still be required to compensate the community for that loss of space, over and above the estate improvement works.
- 7.5. Another challenge facing the St Raphael's estate is the potential use of alternative tenures such as OMS. Whilst OMS would assist in further reducing the viability gap on the estate, the loss of open space is currently justified as the scheme delivers 100% affordable housing. Conversion within the St Raphael's scheme could potentially compromise planning permission.
- 7.6. It is therefore recommended that the Council pause the infill programme for St Raphael's and review the options for phase 1, 2 and 3, in the new financial year.
- 7.7. In the meantime, the Council can utilise the time to finalise designs for the estate improvement works with residents and separate works into three clear categories:

- Works that can be delivered independently of any homes being developed that will not compromise future planning applications;
 - The community centre and any surrounding works;
 - Any remaining works that are linked to the delivery of new Council homes on the estate.
- 7.8. For the first two, it is recommended the Council proceeds with planning permission and procure necessary contractors to deliver these works and the community centre.
- 7.9. For the third category, the Council is reviewing the overall plan for the delivery of new homes and whether sub-phases can be created that are financially viable. The Council is also carrying out a high-level review of designs to identify any features that can be amended to reduce costs. As mentioned, the greatest costs are associated with the groundworks and foundations required for the phase one scheme. The appointed architects for phase 1 Karakusevic have indicated this is likely to be a challenge for phase 2 & 3 also.
- 7.10. Additionally, though a scheme which is not 100% affordable may not be considered appropriate for the loss of space it is recommended if the Council proceeds with submitting planning permission, this is submitted at 50% affordable housing to allow for future flexibility and assist with closing the viability gap. Again, the priority will be to deliver the highest possible amount of affordable housing. Accordingly, 2.9 and 2.10 of the recommendations delegates authority to the Corporate Director, Resident Services in consultation with the Lead Member for Housing, Homelessness and Renters Security to appropriate the parts of the open space required for this development and to develop other areas of St Raphael's Estate as set out in Appendix 5.

8. Legal Implications

- 8.1. Various measures are being taken by Officers to mitigate programme risks to ensure prudent financial management of council resources. The various options to improve scheme viability proposed in this report will all require detailed consideration to ensure that such measures can be implemented legally in respect of individual schemes. For example, where land is held within the Housing Revenue Account, whether the Council is able to provide shared ownership homes may require the Secretary of States Consent pursuant to section 32 of the Housing Act 1985, although the Secretary of State has provided in the General Housing Consent 2013 the ability to grant shared ownership homes without the need to obtain direct consent.
- 8.2. The General Consent 2013 provides in A3.1.1 of the consent that a local authority may, dispose of land for a consideration equal to its market value. The General consent provides a definition of disposal which includes shared ownership leases and the grant of a lease for any duration.

- 8.3. Sale of a shared ownership unit, a freehold interest or leasehold interest should be at market value. The General Housing Consent 2013 defines market value as the amount for which a property would realise on the date of the valuation on a disposal between a willing buyer and a willing seller in an arm's-length transaction after proper marketing where the parties had each acted knowledgeably, prudently, and without compulsion and where the market value is assessed not earlier than 3 months before the buyer applies or agrees to an offer in writing.
- 8.4. Where the Council wishes to charge a market rent the Council is seeking further legal advice. This is due to OMR at present deviates from the Council's allocations scheme, which dictates the types of tenures we can allocate homeless households too.
- 8.5. Also, the proposal regarding partnership working with development/construction companies to provide cross subsidies and more competitive build costs is likely to require the competitive procurement of a partner although whether such procurement is subject to the Public Contracts Regulations 2015 will be dependent on the exact nature of the arrangements.
- 8.6. Significant grant funding has been secured from the GLA. The Council has entered into grant agreements with the GLA governing the award of such funding to include the requirement to deliver specified numbers of new homes. Failure to observe grant conditions or achieve specified delivery numbers may lead to a requirement to repay grant funding and therefore efficient and timely delivery approaches are essential to mitigate the risk.
- 8.7. Development of sites detailed in this report, requires the Council to enter into a range of construction contracts and development agreements, many of which are classed as High Value Contracts under the Council's Contract Standing Orders and Financial Regulations. Cabinet approval is required to procure and award contracts with a value over £10,000,000 For development or construction contracts with an estimated value of less than £10,000,000 Lead Member or Corporate Director/Operational Director approval is required. In these cases, Members will receive information via the six-monthly update and therefore will be updated as to what measures are being taken to progress schemes.
- 8.8. The Council's statutory duties relating to homelessness are set out in Part VII of the Housing Act 1996. When providing temporary accommodation to homeless applicants, whether it is on an interim basis under section 188(1) & (3) of the Housing Act 1996 pending further enquiries or any reviews or on a more medium term basis where the Council has accepted a duty to provide temporary accommodation and discharges that duty under section 193 of the Housing Act 1996, the Council has to provide suitable temporary accommodation, which can be challenging when housing families with disabilities who require alternative accommodation involving adapted properties.

- 8.9. In relation to the development of open space, 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. Section 241 of the Town and Planning Act 1990 provides for the development of open space.
- 8.10. 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 Corporate Director, Resident Services, in consultation with the Lead Member for, 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.
- 8.11. In considering whether or not the Council-owned land should be appropriated for planning purposes, thereafter engaging the powers conferred by Section 203 of the Housing and Planning Act 2016, the Corporate Director, Resident Services, in consultation with the Cabinet Member for [] 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 St Raphael's Estate 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;
 - Whether any related financial liabilities of the Council would be indemnified; and
 - Whether prior consultation had taken place (as outlined above).
- 8.12. St Rafael's Estate is currently held for Housing purposes pursuant to part II of the Housing Act 1985. According, prior to appropriating the sites the Council must seek the consent of the Secretary of State pursuant to section 19 of the Housing Act 1985, Appropriation of part of St Raphael's Estate for planning purposes would facilitate the carrying out of the development. There is a

compelling case in the public interest to appropriate St Raphael's Estate for planning purposes, as developing the Estate 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 Estate 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.

- 8.13. If a third party is able to establish that it has an easement or a right over the Estate or part thereof (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 Estate by applying for an injunction to prevent the delivery of the development. The effect of appropriation, and the resulting engagement of the powers in section 203 of the Housing and Planning Act 2016, is therefore to facilitate the re-development and improvement of the Estate despite interference with the existing third party rights over the site (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 basis.
- 8.14. Section 204 of the Housing and Planning Act 2016 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 such loss.

9. Financial Implications

- 9.1. The proposed change in subsidy to Shared Ownership, Open Market Rent and Open Market Sale include assumptions around the market values for the associated sites. A market assessment has been undertaken by officers however due diligence will take place to verify these assumptions as well as identifying future market trends given the multi-year nature of schemes.
- 9.2. The Council is exploring the appropriate mechanism to execute the subsidy options including Shared Ownership, Open Market Rent and Open Market Sale. This may include ownership and or management of some of the units by our wholly owned housing companies, which will be subject to a separate governance process.
- 9.3. Work is also ongoing to assess the impact of the previous cross-subsidy of the housing for the community spaces on the mixed development sites. Given the inflationary price increases, the housing element is not providing sufficient cross-subsidy so other funding sources including CIL are being reviewed to support the viability of the schemes.

10. Equality Implications

- 10.1. The Council must, in the making of decisions in exercise of its functions, have due regard to the need to:
- eliminate discrimination, harassment and victimisation;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it, pursuant to s149 (1) Equality Act 2010. This is known as the Public Sector Equality Duty.
 - Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 10.2. 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.
- 10.3. The November 2018 Cabinet Paper on the St Raph's master planning included an Equalities Analysis (EA) which provided an assessment of the impact of the proposed masterplan on residents.
- 10.4. The judgement to date on the potential impact of the proposal on groups with each protected characteristic, both within and outside the red line master planning area, is based on the intention that housing, transport, environmental and community improvements, and development opportunities will on the whole have a positive impact, however until the options are developed this cannot be analysed. Equality monitoring information will be examined for those living in St Raph's Estate and the needs of groups will be considered throughout the development of the options.
- 10.5. Further reviews and updates will be carried out in tandem with the development of the masterplan options and the landlord offer. Detailed equality monitoring

information will be collected through the Housing Needs Assessment and via equalities monitoring at all public events to which all residents will be invited.

11. Consultation with Ward Members and Stakeholders

- 11.1. This report has been written in consultation with key members of Cabinet, the Greater London Authority, and Contractors delivery for the NCHP and key officers across the Council.
- 11.2. Subject to Cabinet approval, the Affordable Housing and Partnerships service will brief ward members in full on any changes to schemes in their ward.

Report sign off:

Peter Gadsdon
Corporate Director, Resident Services