



**Officer Key Decision**  
January 2024

**Report from the Corporate Director  
of Communities and Regeneration**

**Acquisition of Falcon Public House Site, Kilburn Lane, NW10**

<b>Wards Affected:</b>	Queen's Park, Kilburn
<b>Key or Non-Key Decision:</b>	Key
<b>Open or Part/Fully Exempt:</b> <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Part Exempt – Appendix 1 is exempt as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)"
<b>No. of Appendices:</b>	One Appendix 1 (exempt) – Additional financial considerations relating to proposed offer)
<b>Background Papers:</b>	None
<b>Contact Officer(s):</b> <small>(Name, Title, Contact Details)</small>	Archika Kumar Head of Estate Regeneration <a href="mailto:Archika.Kumar@brent.gov.uk">Archika.Kumar@brent.gov.uk</a>

**1.0 Purpose of the Report**

1.1 This report seeks approval for the Council to make an offer as set out in Appendix 1 (classified as containing exempt information) to Londonewcastle (QP2) LLP (LN) for the acquisition of the freehold of the Falcon Public House site situated on Kilburn Lane (the "Site"). The objective is to accelerate the comprehensive redevelopment of the Queen's Park Cullen site, contributing to the ongoing regeneration of South Kilburn Housing estate to deliver much needed affordable housing.

**2.0 Recommendation(s)**

2.1 This report recommends approval by the Council for making an offer as set out in Appendix 1 (classified as containing exempt information) to LN to acquire the freehold of the Site.

### **3.0 Detail**

3.1 At its meeting on 14 October 2019, Cabinet resolved to terminate the South Kilburn Queens Park LLP Project Agreement and Members Agreement (“SKQP Agreement”) by 30 October 2019, if an agreement on outstanding conditions precedent could not be reached between the Council and LN.

3.2 Additionally, Cabinet resolved that, contingent upon the termination of the SKQP Agreement, the Council should enter into an option agreement for the acquisition of the Site. The authority to exercise this option and negotiate terms for the acquisition of the Site was delegated to the Strategic Director of Regeneration and Environment (now Corporate Director of Community and Regeneration), in consultation with the Cabinet Member for Regeneration, Property, and Planning (now the Cabinet Member for Regeneration, Planning and Growth).

3.3 Despite efforts to resolve matters between the parties the SKQP Agreement was terminated. As per the terms of the termination and the Option Agreement dated 27 June 2022, the Council has the right to acquire the Site at the market value as at 17 August 2020.

3.4 On 10 November 2022, LN made an offer as set out in Appendix 1 to sell the Site to the Council, LN reiterated this offer on 26 January 2023. Subsequently, on 3 February 2023, the Council, relying on an independent valuation conducted by Gerald Eve in February 2023, presented a counteroffer as set out in Appendix 1 (classified as containing exempt information) In response, LN submitted a Calderbank offer as set out in Appendix 1 on 20 February 2023.

3.5 As a consensus on the purchase price could not be reached, the Council notified LN on 27 February 2023, that the matter would be referred to an independent valuer as stipulated in the Option Agreement. Subsequently, on 4 July 2023, the President of the Royal Institution of Chartered Surveyors appointed an Arbitrator to assess the Market Value of the Site as at 17 August 2020, as outlined in the Option Agreement.

3.6 The parties are presently engaged in arbitration and are in the process of compiling their individual planning and valuation evidence to substantiate their valuations of the Market Value of the Site. The Arbitrator will subsequently review this evidence and determine the Market Value through an award.

3.7 It is advisable for the Council to make a Calderbank offer during the arbitration process. In the event that the arbitrator's award is at or below the specified offer figure of the Council, the Council may have the opportunity to seek reimbursement for the arbitration costs incurred.

- 3.8 If the arbitrator's award equals or exceeds the Calderbank offer of LN, then LN might be eligible to seek reimbursement of their arbitration costs from the Council. In the event that the arbitrator awards a figure falling between the two Calderbank offers, no costs award may be made, and each party will bear their own costs. Nonetheless, the arbitrator will consider the conduct of the parties, and if one is found to be unreasonable, there is a possibility of a costs award against them.
- 3.9 If the Council refrains from making an offer, then there is no basis for seeking costs. Moreover, a higher offer from the Council enhances the likelihood of acceptance by LN, increasing the probability of the Council being partially reimbursed for its costs while avoiding the obligation to cover LN's or the arbitrator's costs. In essence, making a Calderbank offer carries no inherent disadvantages and a number of potential advantages.
- 3.10 The Council has appointed a team of experts including design, planning, valuation and cost consultants to determine the value of the Site as at 17 August 2020 and prepare evidence as required by the Order of Directions issued by the Arbitrator. Upon detailed review, the experts are of the view that the Council's offer made in February 2023 as set out in Appendix 1 remains a suitable offer and strikes a balance between the market value of the Site as determined by the Council's appointed valuers and improving the chances of it being accepted by LN and being as close as possible to the award made by the Arbitrator.

### **Contribution to Borough Plan Priorities & Strategic Context**

- 3.11 South Kilburn was identified as a priority area for driving economic opportunity and regeneration within Brent – Prosperity and Stability in Brent, Thriving communities (Brent Borough Plan 2023-27). The Regeneration Strategy for Brent 2010-2030 identifies the transformational change of South Kilburn within strategic priority one. The regeneration will also make contributions to the other four priorities of the A Cleaner, Greener Future, Thriving Communities, The Best Start in Life and A Healthier Brent.

### **4.0 Financial Considerations**

- 4.1 The South Kilburn budget within the capital programme includes the provision for the proposed acquisition of the Falcon Public House site. An acquisition at the offer price as set out in Appendix (classified as containing exempt information) 1 will be subject to Stamp Duty Land Tax costs.
- 4.2 There is no disadvantage to the making of a Calderbank offer given the potential opportunity for costs to be claimed from LN through the arbitration process.

### **5.0 Legal Considerations**

- 5.1 Only the Corporate Director, Finance and Resources or the Director of Property and Assets may acquire or dispose of an interest in land or buildings.

- 5.2 The restrictions placed upon such acquisitions or disposals are set out in paragraphs 11.2 and 11.3 of the constitution. The Corporate Director, Finance and Resources or the Director of Property and Assets shall refer all other acquisitions and disposals including matters where the disposal or acquisition value are over and above the restrictions set out in paragraphs 11.2 and 11.3 of the constitution but below the amounts set out in paragraph 13 of the constitution to the cabinet member with delegated authority or to the cabinet.
- 5.3 Cabinet, at its meeting on 14 October 2019, authorised the option to acquire the Site to be exercised and for the terms of such acquisition to be agreed by the Corporate Director of Community and Regeneration in consultation with the Cabinet Member for Regeneration, Planning and Growth.

## **6.0 Equality, Diversity and Inclusion Considerations**

- 6.1 The area was previously a New Deal for Communities area and as such, all interventions are specifically targeted at those people who suffer social economics disadvantage. South Kilburn Trust, through its widening participation, seek to find ways of involving and engaging with all local residents and particularly those who traditionally are 'hard to reach'.
- 6.2 The new homes in South Kilburn are available to all secure tenants currently living in properties due for demolition as part of the South Kilburn regeneration programme within the neighbourhood regardless of their ethnicity, age, gender, marital status/civil partnership, sexual orientation, disability, gender identity or expression or religion or belief. A proportion of new homes are designed to be wheelchair adaptable while the allocations process considers the housing needs of secure tenants in respect of issues that maybe derived from individuals' age, disability, gender reassignment, pregnancy and maternity status, marriage and civil partnership status, race, religion or belief, sex, sexual orientation, ethnicity. Following the upcoming Needs Assessments carried out by the Estate Regeneration Housing Team the equalities actions will be reviewed and analysed at that time.

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

- 7.1 Consultation with Lead member for Finance, Resources and Reform and also Regeneration and Planning has been carried out in relation to this matter. Ward Members have been engaged in terms of the proposed course of action.

## **8.0 Climate Change and Environmental Considerations**

- 8.1 The Council declared a climate and ecological emergency in 2019 and set out to do all in its gift to become carbon neutral on a borough-wide basis by 2030. The Council has also embarked on a pioneering 'Green Neighbourhoods' programme as one of the key focal points of its 2022-24 Delivery Plan, of which South Kilburn was selected as a 'development-led' Green Neighbourhood.

8.2 There are no identifiable direct climate change or environmental implications with relation to making an offer for the Site recommended in this report. However, should the Council be successful in acquiring the site, officers should be mindful of the Council's existing climate emergency commitments and any future course of action should seek to be as environmentally sustainable as possible, and seek to minimise emissions or any detrimental environmental impact. This is especially important given that South Kilburn is a designated green neighbourhood, as mentioned above.

## **9.0 Human Resources/Property Considerations (if appropriate)**

9.1 There are no direct Human Resource implications of this report. The proposals contained within this report will secure the Site for future development as part of the south Kilburn Regeneration Programme.

## **10.0 Communication Considerations**

10.1 South Kilburn Regeneration programme including the development of the physical proposals of the area has been and will continue to be subject of extensive consultation and engagement with the community in and around South Kilburn estate. The Programme was subject of a Residents' ballot in 2019.

**Report sign off:**

***Alice Lester***

Interim Corporate Director of Communities and  
Regeneration