

Appendix 2 - Legal considerations which were identified in the report to the Cabinet of October 2024 and remain applicable.

- 7.4. The procurement exercise continues to be undertaken pursuant to the Procurement Act 2023 (PA 2023).
- 7.5. The procurement is subject to the Council's own Standing Orders and Financial Regulations in respect of High Value Contracts. For High Value Contracts, Cabinet approval was obtained in October 2024 to invite tenders in accordance with Standing Order 88. Under Standing Order 89 Cabinet delegated the approval of the pre-tender considerations to the Corporate Director, Neighbourhoods and Regeneration in consultation with the Leader of the Council and Cabinet Member for Regeneration Planning and Growth is sought to approve pre-tender considerations, including the selection of the most appropriate procurement process and this delegation has been exercised.
- 7.6. As committed to in October 2024, this report to Cabinet explains the process undertaken in tendering the Contract and recommending award.
- 7.7. The council must first obtain the permission of the Secretary of State prior to any appropriation of the council land for housing purposes. This consent is given under section 19 Local Government Act 1985. As a consequence of this consent and after appropriation has taken place the council land is no longer held for the purposes of Part II of the Housing Act 1985 and does not need to be accounted for within the Housing Revenue Account.
- 7.8. s.122 of the Local Government Act 1972 allows the council to appropriate council land for planning purposes. In considering whether or not the council owned land within the sites to be appropriated for planning purposes, thereafter, engaging the powers conferred by section 203 of the Housing and Planning Act 2016, the Corporate Director of Neighbourhoods and Regeneration, in consultation with the Cabinet Member for Regeneration Planning and Growth, to 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 relevant sites would be in the public interest. 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;

- Whether the public interest benefits which would arise from the redevelopment of the relevant 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.

- 7.9. The council has the power to override third party rights in accordance with section 203 Housing and Planning Act 2016. This power is useful for the council when developing its land to ensure that third parties with certain rights over the sites are overridden. Section 203 prevents third parties from obtaining an injunction to prevent redevelopment, however, compensation may be payable. The council is required to consult with third parties prior to invoking section 203 and the officers should therefore ensure that they build in a period of consultation prior to the commencement of construction and assessing the level of compensation payable.

CPO

- 7.10. In order to acquire any third party land to facilitate the development of the remaining phases, if such land cannot be acquired through negotiation, the council can consider exercising its compulsory purchase powers. The council has power under section 226(1) Town and Country Planning Act 1990 and Section 17 Housing Act 1985 which empower local housing authorities to acquire land, houses or other properties by compulsion for the provision of housing accommodation. If the council wanted to exercise its CPO powers a separate cabinet report would be needed to obtain the consent of cabinet to make the CPO order.
- 7.11. The statutory power under section 226(1) can be used if the council believes that it will facilitate the carrying out of the development of the remaining phases. 'Development' is defined by section 55 of the Town and Country Planning Act 1990 as redevelopment or improvement on or in relation to the land being acquired.
- 7.12. The compulsory purchase order must only be made where there is a compelling case in the public interest. In addition, the council should be sure that the purposes for which the compulsory purchase order is made justify interfering within the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article I of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.

Stopping Up

- 7.13. In order to develop out the remaining phase of the South Kilburn regeneration programme, certain areas of public highway or footway may need to be stopped up to facilitate development. The stopping up will be done under section 247 and section 253 of the Town and Country Planning Act 1990 (TCPA 1990). A draft stopping up order will need to be advertised in accordance with the requirements of section 247 and 53 of the TCPA 1990. If there are any objections that arise out of this consultation then discussions will need to take place with the objectors with the objective being that they withdraw their objections. A report will then need to be submitted by the Corporate Director of Neighbourhoods and Regeneration to the General Purposes Committee seeking approval of the Stopping Up Order, and that the notices advising this should be advertised.
- 7.14. A stopping up order extinguishes the right of the public to pass and repass over the land to which the order will apply. Compensation is not payable to those adversely affected.

Ground 10 or 10(A) of Schedule 2 of the Housing Act 1985

- 7.15. As part of the council's decant policy to secure vacant possession of sites that are to be developed, the council may need to rely on ground 10 or 10(A) of Schedule 2, Part II of the Housing Act 1985 under which it may apply to court to obtain possession of a property in order to dispose of, redevelop or demolish the property.
- 7.16. In order to rely on either Ground 10 or 10(A) the council must be able to offer suitable alternative accommodation to the outgoing tenant and must obtain the Secretary of State's approval of the proposed scheme.
- 7.17. Prior to applying to the Secretary of State the council must serve written notice on all secure tenants affected by the proposed scheme. The notice must give the tenants at least 28 days to make representations to the council about the proposed scheme. Any representations made to the council by tenants in the 28 day period must be considered by the council before the council applies to the Secretary of State for approval.
- 7.18. The Hereford and Exeter blocks are now empty and it is intended that the first phase of redevelopment will be at this location.

Demolition Notices

- 7.19. As part of the future redevelopment of the remaining phases in the South Kilburn regeneration programme the council will need to serve Initial Demolition Notices upon secure tenants. A recommendation will be put to cabinet to seek approval to apply to The Secretary of State to serve Initial Demolition Notices on the secure tenants at the sites which are to be developed to ensure the suspension of the secure tenants' Right To Buy ("RTB") for 7 years subject to any conditions that the Secretary of State may impose. Authorisation will also

be sought for the Corporate Director of Neighbourhoods and Regeneration to serve the Final Demolition Notices on the council's secure tenants of the sites once the date for demolition of the properties is known.

- 7.20. An Initial Demolition Notice under Schedule 5A of the Housing Act 1985 is a notice served on a secure tenant stating that the council intends to demolish the premises. Whilst the Initial Demolition Notice remains in force the council will not be obliged to convey the leaseholder interest to the secure tenant. The Initial Demolition Notice does not prevent a claim from the leaseholder to exercise the RTB. The Initial Demolition Notice must state that there is a right to compensation. The period of suspension of the leaseholder's RTB lasts 7 years from the date of Service of the Initial Demolition Notice. No further demolition notices may be served during a period of 5 years following the time when the Initial Demolition Notice comes into force unless the further notice is served with the consent of the Secretary of State.
- 7.21. A Final Demolition Notice 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. The Final Demolition Notice must state that section 138(c) Housing Act 1985 confers a right to compensation for the secure tenant. The proposed demolition date must fall within 24 months beginning with the date of service of the Final Demolition Notice on the tenant.
- 7.22 In terms of the first phase of the development at Hereford and Exeter which are now empty, clearly there is no ongoing risk of right to buy applications.