

	<p style="text-align: center;"><b>Executive</b> 20 May 2013</p> <p style="text-align: center;"><b>Report from the Director of Regeneration and Major Projects</b></p>
<p style="text-align: right;">Wards Affected: Kilburn</p>	
<p style="text-align: center;"><b>South Kilburn Regeneration Phase 2b</b></p>	

**Not for publication ('below the line')**

Appendix 2 to this report is not for publication.

**1. Summary**

**1.1 General**

This report concerns Durham Court, Gloucester House, Masefield House and Wordsworth House (together defined as '**Phase 2b**') of the South Kilburn regeneration programme.

This report seeks the Executive's approval to award a contract for the full architectural design team to develop detailed design and specification to RIBA Stage D+ for Gloucester House and Durham Court as required by Contract Standing Order No 88. The report summarises the process undertaken in conducting a mini-competition under a framework and, following completion of the evaluation of mini-tenders, recommends to whom the contract should be awarded.

This report also seeks approval to authorise the Director of Regeneration and Major Projects to seek the Secretary of State's consent pursuant to Part V of Schedule 2 to the Housing Act 1985 to the disposal and development of Phase 2b for the purpose of Ground 10A of Schedule 2; and also seeks approval to authorise the final Allocation Policy for Secure Tenants with homes in Phase 2b.

**2. Recommendations**

2.1 That the Executive award of a contract for a full architectural design team to Feilden Clegg Bradley Studios LLP from the Homes and Communities Agency's Multidisciplinary Panel Framework to lead the design team through to full planning

application (RIBA Stage D+) for the redevelopment of Gloucester House and Durham Court in South Kilburn (being part of '**Phase 2b**').

2.2 That the Executive, having noted and considered the responses to the consultation as set out in Appendix 6 in connection with seeking approval of the Secretary of State for use in seeking possession of properties in Phase 2b under Ground 10A of Schedule 2 to the Housing Act 1985, to delegate authority to the Director of Regeneration and Major Projects to seek the Secretary of State's consent pursuant to Part V of Schedule 2 to the Housing Act 1985 to the disposal and development of Phase 2b for the purpose of Ground 10A of Schedule 2 to be used to obtain possession of dwellings occupied by Secure Tenants in Phase 2b, South Kilburn.

2.3 That the Executive, having noted and considered the responses to the consultation as set out in Appendix 6 in connection with the intention to make a Compulsory Purchase Order on properties in Phase 2b currently occupied by secure tenants and in connection with the draft Allocation Policy for secure tenants with homes in Phase 2b, approves the adoption of the Allocation Policy which will apply to all Secure Tenants with homes in Phase 2b and which includes the proposal to make a CPO on properties in Phase 2b currently occupied by secure tenants as well as seeking possession of properties in Phase 2b, subject to the Secretary of State's consent, under Ground 10A of Schedule 2 to the Housing Act 1985. This Policy sets out the basis on which replacement homes will be allocated to Secure Tenants currently occupying homes in Phase 2b and the legal means to be adopted for seeking possession of dwellings occupied by Secure Tenants in Phase 2b through the use of Ground 10A of the Housing Act 1985 (if approval is given by the Secretary of State) and compulsory purchase powers under section 226(1)(a) of the Town and Country Planning Act 1990.

### **3. Detail**

#### **3.1 Gloucester House and Durham Court Architectural Design Team Appointment**

3.1.1 The redevelopment of Gloucester House and Durham Court sites aims to deliver a high quality residential led development of approximately 214 new homes and an energy centre for the South Kilburn neighbourhood heating system. On 22<sup>nd</sup> April 2013 the Executive noted officers' intention to progress procurement of a full architectural design team to develop detailed design and specification to RIBA Stage D+ for Gloucester House and Durham Court as shown edged red on Plan A, Appendix 1, by calling off the Homes and Communities Agency's (HCA) Multidisciplinary Panel Framework and report back to the Executive following award of contract.

3.1.2 Officers subsequently conducted a mini-competition under Lot 2 of the HCA Multidisciplinary Panel Framework. Ten tenders were submitted (Appendix 2) (restricted) and evaluated; with a weighting of 30% applied to price and 70% applied to quality criteria. The quality criteria considered how the submission performed in respect of:

- The council's vision for South Kilburn and how the submission will help the Council to achieve this vision
- The characteristics for the specific sites, including opportunities and constraints

- Relevant experience
- Resources and the strength of the design team
- Ability to meet the council's requirements in terms of delivery
- Ability to meet the council's requirements in respect of public consultation.

3.1.3 The final scores awarded to all tenderers are available at Appendix 3. It will be noted that Feilden Clegg Bradley Studios LLP was evaluated as the most economically advantageous tender. In accordance with the Council's Standing Orders, this is classed as a High Value Contract. Agreement of the Executive is therefore sought under Standing Order 88 to award the contract to Feilden Clegg Bradley Studios LLP.

### 3.2 **Statutory Consultation with Secure Tenants Occupying Properties in Phase 2b in relation to Ground 10A, CPO & draft Allocation Policy**

3.2.1 A key principle of the phasing strategy for the South Kilburn regeneration programme is that the new homes developed will, where the relevant needs are met, be made available to residents within sites earmarked for development in the next phase. On this basis, the new homes which will be developed along Cambridge Avenue, Chichester Road and Rupert Road (together defined as '**Phase 1b development sites**') will primarily be for existing Secure Tenants of Phase 2b. This in turn will ensure vacant possession of properties within Phase 2b, to enable further phases within the South Kilburn regeneration programme to be brought forward for redevelopment and more existing South Kilburn Secure Tenants to be re-housed in new high quality homes.

3.2.2 On 15<sup>th</sup> October 2012 the Executive authorised officers to review the strategy for securing vacant possession of properties occupied by Secure Tenants in Phase 2b. Presently the Allocation Policy for Phase 1, South Kilburn is based on using Ground 10A of the Housing Act 1985. Authority was granted to consider including promoting a CPO under section 226(1)(a) of the Town and Country Planning Act on dwellings in Phase 2b currently occupied by Secure Tenants.

3.2.3 The rationale for changing the Allocation Policy in relation to Phase 2b and the Council's means of obtaining vacant possession from properties occupied by Secure Tenants is based upon the requirement to have absolute certainty that vacant possession can be achieved in a timely and efficient manner by an agreed date, providing the Council and its developer partners with confirmation of delivery of, not only the scheme on site, Phase 2b, but also the rolling decant and delivery programme across the South Kilburn regeneration programme as a whole. The use of Ground 10A alone does not give the Council the required certainty of vacant possession. Officers sought Leading Counsel's advice on this matter and he advised the Council to obtain vacant possession of development areas on the South Kilburn regeneration programme using two means; (i) to seek to obtain possession of residential premises held under secure tenancies by relying upon section 84 and Ground 10A in schedule 2 of the Housing Act 1985; and (ii) to make a compulsory purchase order relying on section 226(1)(a) of the Town and Country Planning Act 1990 ("TCPA 1990").

3.2.4 On 22<sup>nd</sup> April 2013 the Executive noted that statutory consultation was being undertaken with Secure Tenants occupying dwellings in Phase 2b (shown on Plans A and B, Appendix 1) on three proposals; (i) statutory consultation in connection with seeking approval of the Secretary of State pursuant to Part V of Schedule 2 to the Housing Act 1985 for use of Ground 10A of Schedule 2; (ii) consultation on the Council's proposal to make a Compulsory Purchase Order (CPO) on dwellings in Phase 2b currently occupied by Secure Tenants; and (iii) consultation in connection with a draft Allocation Policy for Phase 2b. This consultation process was undertaken in accordance with the consultation strategy set out at Appendix 4.

3.2.5 The representations received in response to the consultation and the Council's responses to them are shown at Appendix 6. The Executive must consider all of these responses and the matters set out in this report before making any of the decisions recommended in Section 2 of this report.

### **3.3 Statutory Consultation in connection with seeking approval of the Secretary of State for use of Ground 10A of the Housing Act, 1985**

3.3.1 As part of statutory consultation required under the provisions of Ground 10A and Part V of Schedule 2 to the Housing Act 1985, on 27<sup>th</sup> March 2013, formal notices were served by hand on 175 Secure Tenants occupying dwellings in Phase 2b of the South Kilburn regeneration scheme. The notice included a covering letter, booklet and comments sheet, copies of which are shown at Appendix 5. The booklet also gave information on two other proposals that were the subject of formal consultation, the details of which are set out in section 3.4 and 3.5 below. Pages 4 to 7 of the booklet set out the main features of the regeneration of Phase 2b and stated the Council's proposal to make an application to the Secretary of State for formal approval of the proposed redevelopment of Phase 2b for the purposes of Ground 10A. The booklet noted that comments or observations should be made to the Council within a period of 28 days, which commenced the day after the notices were served.

3.3.2 Following the statutory consultation, four representations were received from Secure Tenants with homes in Phase 2b, South Kilburn, the Independent Resident Advisor and the Tenant Representative, in relation to use of Ground 10A. The representations received and the Council's responses to them are shown at Appendix 6.

### **3.4 Consultation in connection with Intention to make a CPO on properties in Phase 2b currently occupied by Secure Tenants**

3.4.1 As a proposal was being made to change policy in relation to Secure Tenants, consultation was conducted under Section 105 of the Housing Act 1985 and, on 27<sup>th</sup> March 2013, formal notices were served by hand on 175 Secure Tenants occupying homes in Phase 2b of the South Kilburn regeneration scheme. The notice included a covering letter, booklet and comments sheet, copies of which are shown at Appendix 5. The booklet also gave information on two other proposals that were the subject of formal consultation, the details of which are set out in section 3.3 above and 3.5 below. Pages 8 and 9 of the booklet set out the rationale for the Council's proposal to promote a CPO on dwellings occupied by Secure Tenants in Phase 2b as part its proposed policy for securing possession; because the Council cannot be guaranteed

to secure the regeneration of Phase 2b in a timely and efficient manner by the use of Ground 10A alone. However, the letter and booklet also advised that the Council intended to use CPO means to gain possession of dwellings occupied by Secure Tenants when it needed to ensure the timetable for regeneration could be complied with. The booklet noted that comments or observations should be made to the Council within a period of 28 days, which commenced the day after the notices were served.

3.4.2 Following the statutory consultation, seven representations were received from Secure Tenants with homes in Phase 2b, South Kilburn, the Independent Resident Advisor and the Tenant Representative, in relation to the Council's intention to make a CPO on dwellings currently occupied by Secure Tenants. The representations received and the Council's responses to them are shown at Appendix 6.

### **3.5 Consultation in connection with draft Allocation Policy for Secure Tenants with homes in Phase 2b, South Kilburn**

3.5.1 As a proposal was being made to change policy in relation to Secure Tenants, consultation was conducted under Section 105 of the Housing Act 1985 and, on 27<sup>th</sup> March 2013, formal notices were served by hand on 175 Secure Tenants occupying homes in Phase 2b of the South Kilburn regeneration scheme. The notice included a covering letter, booklet and comments sheet, copies of which are shown at Appendix 5. The booklet also gave information on two other proposals that were the subject of formal consultation, the details of which are set out in section 3.3 and 3.4 above. Pages 11 to 38 of the booklet included a copy of the draft Allocation Policy for Phase 2b which sets out the policy for the allocation of replacement homes to Secure Tenants currently living in homes within Phase 2b, which will be demolished as part of the South Kilburn regeneration scheme. It noted that the Allocation Policy has been revised to reflect the intention to use both Ground 10A and CPO powers to seek possession of homes currently occupied by Secure Tenants. The draft Allocation Policy also set out the policy and procedure for the making of home loss and disturbance payments to Secure Tenants, who are entitled to such payments in accordance with Council policy (including the Land Compensation Act 1973). The booklet noted that comments or observations should be made to the Council within a period of 28 days, which commenced the day after the notices were served.

3.5.2 Following the statutory consultation, twenty four representations were received from Secure Tenants with homes in Phase 2b, South Kilburn, internal stakeholders (Brent Housing Partnership and Housing Policy), the Independent Resident Advisor and the Tenant Representative, in relation to the draft Allocation Policy for Phase 2b. The representations received and the Council's responses to them are shown at Appendix 6. The Council has considered the representations it received as part of this consultation process, and has as a result updated the original draft Allocation Policy that was included at pages 11 to 38 of the booklet as follows:

- a) **Paragraph 5.3.2** – the original draft set out that, children of different sexes will be expected to share a bedroom up to the age of seven. In assessing the number of bedrooms required by a household, the Department of Work and Pensions applies the criteria that children of different sexes will be expected to share a bedroom up to the age of ten years. On 22<sup>th</sup> April 2013 the Executive approved the revised borough-wide Allocation Scheme which included a change so the Council applies

the same criteria as the Department of Work and Pensions in relation to children of opposite sexes sharing. The Phase 2b Allocation Policy has also been amended to align with the borough wide Allocation Policy. This change was communicated in a clarification letter send to all Secure Tenants with homes in Phase 2b on 17<sup>th</sup> April 2013. A copy of the clarification letter is shown at Appendix 8.

- b) Paragraph 5.4.1** – the original draft set out that the ‘Needs Plus’ principle would apply only to a Secure Tenant living in a home with 3 bedrooms or more where the Secure Tenant’s household has more bedrooms than are needed. This section of the draft Allocation Policy has been updated to confirm that the Needs Plus principle will only apply to Secure Tenants that satisfy both of the following:
- Secure Tenants living in a home with three bedrooms or more where the Secure Tenant’s household has more bedrooms than are needed; and
  - Secure Tenants that have the ability to pay the rent on a replacement home larger than they need.
- This section of the draft Allocation Policy has also been updated to confirm that the Needs Plus principle is at the Council’s discretion. The Council will determine which Secure Tenant is to be allocated a replacement home with one bedroom more than the Secure Tenant would otherwise qualify for.
- c) Paragraph 5.4.2** – the original draft set out information regarding welfare reform. This paragraph has been updated to remove the reference to ‘bedroom tax’ and replaced it with the policy’s correct name of ‘size and criteria for social housing’. This paragraph has also been updated to reflect the fact that this welfare reform came into force on 1<sup>st</sup> April 2013.
- d) Paragraph 7.2 (new)** – this paragraph was not included in the original draft. The new paragraph sets out how allocations will be prioritised. This change was communicated in a clarification letter send to all Secure Tenants with homes in Phase 2b on 17<sup>th</sup> April 2013. A copy of the clarification letter is shown at Appendix 8.
- e) Paragraphs 7.3.1 & 7.4.1** – the original draft set out information on Suitable Offers of a new home within Phase 1b and Phase 2a redevelopment sites of the South Kilburn regeneration programme. Phase 1b and Phase 2a redevelopment sites comprise homes to be built in Cambridge Avenue, Chichester Road, Rupert Road and the Bronte and Fielding House site as part of the South Kilburn regeneration programme. On 4<sup>th</sup> April 2013, at a presentation to the Tenant Steering Group, it was clarified that, if a Secure Tenant in Phase 2b is allocated a permanent new-build home within South Kilburn, it is likely to be located within the Phase 1b redevelopment sites along Cambridge Avenue, Chichester Road and Rupert Road.
- f) Paragraphs 7.3.2 & 7.4.2** – the original draft set out information on Suitable Offers of alternative accommodation, outside of South Kilburn. These paragraphs have been updated to advise that, where a Secure Tenant moves to a permanent Council home outside South Kilburn, the Council will fully decorate the property.
- g) Paragraph 7.3.3** – the original draft set out the re-housing process and options for Secure Tenants with one bedroom needs, advising they will be made one Suitable Offer of alternative accommodation which would be: 1) within South Kilburn

(permanent move) to either a new home on the new developments or to an existing Council property that is not due for demolition; or 2) outside South Kilburn (permanent move); or 3) within South Kilburn (temporary move). This paragraph has been updated to confirm that, where Suitable Offers of permanent alternative accommodation within or outside South Kilburn cannot be identified, Secure Tenants with a one bedroom need will be offered a temporary home within a block due for demolition as part of the South Kilburn regeneration Programme. The Secure Tenant will remain in the temporary home until it is required for demolition as part of the South Kilburn regeneration Programme, at which time the Secure Tenant will be made a Suitable Offer of a new replacement home. This guarantees the Secure Tenant the 'right to return' to a new home on the estate.

- h) **Paragraph 9.1** – the original draft set out information on the rent levels of the new affordable homes on South Kilburn. This has been updated to confirm that Secure Tenants who are allocated a new replacement home in South Kilburn will pay higher rent than for their existing Council property. This clarification was communicated in a clarification letter sent to all Secure Tenants with homes in Phase 2b on 17<sup>th</sup> April 2013. A copy of the clarification letter is shown at Appendix 8.
- i) **Paragraph 12.4** – the original draft set out Stage Two of the appeals process once a CPO has been confirmed. This paragraph has been updated to confirm that the Council will adopt a two stage appeals process that involves a decision by South Kilburn's Re-housing Project Manager in the first instance and, if the Secure Tenant does not agree with the outcome of this initial appeal, an appeal to and decision by a more senior officer within the Council. The Council proposes that this more senior officer be the South Kilburn Programme Manager. The Council also proposes that the South Kilburn Programme Manager will refer the appeal to an independent review body and consider the decision of the independent review body when making his/her decision.

3.5.3 A copy of the final Allocation Policy for Secure Tenants with homes in Phase 2b is shown at Appendix 7.

## **4. Legal Implications**

### **4.1 Gloucester House and Durham Court Design Team Appointment**

4.1.1 As detailed in section 3.1 above, a mini-competition under the HCA Multidisciplinary Panel Framework was conducted in relation to the procurement of a full architectural design team to develop detailed design and specification to RIBA Stage D+ for Gloucester House and Durham Court. The Public Contracts Regulations 2006 (the "EU Procurement Regulations") allow the use of framework agreements and prescribe rules and controls for their procurement. Contracts may then be called off under such framework agreements without the need for them to be separately advertised and procured through a full EU process.

4.1.2 The Council's Contract Standing Orders state that no formal tendering procedures apply where contracts are called off under a framework agreement established pursuant to EU Procurement Regulations by another contracting authority, where call

off under the framework agreement is recommended by the relevant Chief Officer, to include confirmation that there is sufficient budgetary provision for the proposed call-off. However, this is subject to the Director of Legal and Procurement advising that participation in the framework agreement is legally permissible and approval to participate in the framework being obtained from the Director of Legal and Procurement. On 25<sup>th</sup> March 2013, such approval was sought from the Director of Legal and Procurement and was subsequently given on 4<sup>th</sup> April 2013.

4.1.3 As the value of the call-off contract with Feilden Clegg Bradley Studios LLP is more than £500k and thus classed as a High Value Contract under the Council's Standing Orders and Financial Regulations, approval of the Executive is required to the award of the call-off contract.

## **4.2 Ground 10A of Schedule 2 of the Housing Act 1985 (Legal)**

4.2.1 The Council is required to obtain the approval of the redevelopment scheme from the Secretary of State when seeking to re-house Secure Tenants who will not leave the dwellings that are due to be disposed of within a reasonable time of possession being obtained in furtherance of the redevelopment scheme. Before seeking such approval, the Council is required to consult with affected tenants. Approval from the Secretary of State pursuant to Part V of Schedule 2 to the Housing Act 1985 will enable the Council to use Ground 10A of Schedule 2. 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 received during that period.

4.2.2 Unlike a tenanted transfer, however, no formal ballot is required to be carried out. However, the Secretary of State, before giving his 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 scheme;
- (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 representations made to him and, so far as they are brought to his notice, any representations made to the landlord.



4.2.3 The landlord, in this case, the Council, must not apply to the Secretary of State for approval of a scheme unless the statutory consultation procedure has been carried out and the landlord has considered the representations received during the specified consultation period.

#### **4.3 Section 105 of the Housing Act (Legal)**

4.3.1 Under section 105 of the Housing Act 1985, the Council as a local authority landlord has a duty to consult with those of its secure tenants who are likely to be substantially affected by a change in practice or policy relating to matters of housing management, which includes the management, maintenance and improvement of dwelling houses let by the Council under secure tenancies and the provision of services or amenities in connection with such dwelling houses. The consultation requirements under section 105 of the Housing Act 1985 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. The Council, before making any decision on the matter, must consider any representations received during the specified consultation period.

### **5. Financial Implications**

#### **5.1 Gloucester House and Durham Court Design Team Appointment**

5.1.1 The tender price for Feilden Clegg Bradley Studios LLP to develop detailed design and specification to RIBA Stage D+ for Gloucester House and Durham Court is £614,970. This can be resourced from the South Kilburn Regeneration Programme budget for 2013/14. Depending on market conditions, it should be possible to recoup this cost when the sites are ultimately disposed of.

#### **5.2 Use of Ground 10A & Phase 2b Allocation Policy**

5.2.1 The financial implications of the policies for seeking possession from Secure Tenants in Phase 2b using Ground 10A of the Housing Act 1985, CPO under section 226(1)(a) of the Town and Country Planning Act 1990 and the Phase 2b Allocation Policy relates to the making of home loss and disturbance payments to Secure Tenants who are entitled to such payments in accordance with Council policy (including the Land Compensation Act 1973). Secure Tenants, who move out of their homes, provided they have lived there for at least twelve months before their move and it is their only or principal home, will be eligible for a home loss payment which is currently £4,700 but which may change in line with government legislation over the period of the regeneration. The Council will always pay the rate which applies at the time of the Secure Tenant's move. In addition to home loss payments, reasonable disturbance costs, including, but not limited to, removal expenses, redirection of mail and telephone disconnection and reconnection may be payable to Secure Tenants who are entitled to such payments. Anticipated home loss and disturbance payments to Secure Tenants with homes in Phase 2b can also be resourced from the Kilburn Regeneration Programme budget.

5.2.2 Comments were received from representors in relation to paragraph 9.1 of the draft Allocation Policy, Phase 2b, which outlined the rent levels of new affordable homes on South Kilburn. The government introduced a rent restructuring policy to ensure that Council rents and the rents charged by Registered Providers become equal by 2015-

16, as Council rents and rents charged by Registered Providers should be similar for homes of a similar size, location and condition. However, rents charged for new affordable homes on South Kilburn will be different to Council rents in the same area, even after 2015-16. This is because the formula to calculate the amount of rent to be paid on a property is based on a combination of individual property values and average earnings in each area. As the value of a new affordable home on South Kilburn is higher than that of an existing Council property, the rent charged for new homes in South Kilburn will always be higher than Council rent, even after 2015-16. This point, amongst others, was clarified in a follow up letter to all Secure Tenants with homes in Phase 2b on 17<sup>th</sup> April 2013. A copy of the clarification letter is shown at Appendix 8.

## **6. Equality Implications**

6.1 South Kilburn is identified as a priority for driving economic opportunity and regeneration within Brent – Our Future 2010-2014 (Brent Borough Plan). The Regeneration Strategy for Brent 2010-2030 identifies the transformational change of South Kilburn within strategic priority 1. Secure Tenants with homes in Phase 2b will be made one suitable offer of alternative accommodation in line with the Phase 2b Allocation Policy regardless of their age, disability, race, religion or belief, sex, whether they are married/in a civil partnership or their sexual orientation. The allocation process considers the housing needs of Secure Tenants and their household in respect of issues that maybe derived from individuals' ethnicity, nationality or national origin; age, gender, sexuality, disability or faith. The potential impact of the recommendations relating to how the Council takes possession of dwellings occupied by Secure Tenants within blocks earmarked for redevelopment within Phase 2b is considered in the Equalities Analysis at Appendix 9.

## **7. Staffing/Accommodation Implications**

7.1 There are no specific staffing or accommodation implications associated with the proposals contained within this report.

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