

 <p data-bbox="341 450 560 517">Brent</p>	<p data-bbox="826 264 1182 353" style="text-align: center;">Cabinet 13 November 2017</p> <p data-bbox="676 439 1334 528" style="text-align: center;">Strategic Director of Community Wellbeing</p>
For Action	Wards affected: All
<p data-bbox="256 645 1171 734" style="text-align: center;">Improving the Housing Offer for Tenants and Leaseholders</p>	

1. Purpose of the Report

- 1.1 This report sets out proposed policy in meeting the needs of residents required to move as a result of estate regeneration programmes and, more widely, how the recommended approach could contribute to addressing Brent's supply shortage by increasing mobility within the housing stock and tackling under-occupation. The policy will cover resident and non-resident leaseholders, tenants, including those renting privately in properties sold through the Right to Buy (RTB), and the more limited number of affected freeholders. All references to leaseholders in this report apply equally to freeholders.
- 1.2 Given the potential wider housing need and supply implications, this report is submitted in the name of the Strategic Director of Community Wellbeing although it is relevant to regeneration schemes in South Kilburn and elsewhere that fall within the remit of the Strategic Director of Regeneration and Environment.
- 1.3 Following consideration at Cabinet the policy will be published for consultation and made available to all tenants and residents. It is proposed that once the consultation responses have been considered, the policy will be finalised and approved by the Strategic Director for Community Wellbeing in consultation with the Lead Member for Housing.

2. Recommendations

- 2.1 That Cabinet approves that the policy approach set out in sections 5 and 6 below should be pursued and to approve the specific recommendations set out below in 2.3 to 2.11 subject to consideration of responses arising from the consultation by the Strategic Director for Community Well-Being.

- 2.2 That the Cabinet gives authority to the Strategic Director for Community Well-Being to consult on the policy for improving the housing offer for displaced tenants and leaseholders, and to finalise and adopt the policy in consultation with the Lead Member for Housing after consideration of the responses received in the consultation process. If the finalised policy following consultation is significantly different from the approach set out in sections 5 and 6 below, the policy will be submitted to the Cabinet for consideration of the consultation responses and to approve the final version of the policy.
- 2.3 That the basic options currently available to tenants and leaseholders will remain part of the menu of options as follows:
- Market purchase in the regeneration area
 - Market purchase elsewhere
 - Shared ownership on the basis of a minimum purchase of 25% of the equity, funded through the buyback receipt and a contribution from Home Loss payments and, where appropriate, any other capital or savings, with rent payable on the share retained by the council.
- 2.4 That a shared equity option, with no rent payable on the equity retained by the council, should be available subject to a minimum purchase of 50% of the equity. This only applies to resident leaseholders
- 2.5 That a leasehold swap option should be offered, through which a leaseholder can transfer the equity in their current home into a void council property within (provided the property is not scheduled for demolition) or outside the regeneration area.
- 2.6 That, where it would be to the council's advantage or will assist in meeting needs that could otherwise delay a regeneration programme, advance purchase of properties scheduled for demolition should be considered.
- 2.7 That, on a similar basis to that proposed in recommendation 2.5, advance payment of Homes Loss and Disturbance compensation should be available to leaseholders and tenants.
- 2.8 That, in limited cases subject to detailed review, reversion to tenancy in acquired private sector property should be offered to leaseholders unable to pursue any other option, with buyback prices based on full market value. This would also be available to other leaseholders or tenants who wish to pursue this option.
- 2.9 That support and advice should be available to vulnerable households to secure supported housing where required, including the option of reversion to tenancy in Extra Care or similar provision where necessary.

- 2.10 That the council should purchase properties tailored to the needs of under-occupiers to release larger homes for renting within existing acquisition programmes. This could include purchase in the private sector or buy-back from leaseholders of smaller properties seeking to sell.
- 2.11 That the council should develop a programme to buy back properties from leaseholders who need to move on grounds of ill-health, disability or vulnerability, offering the full range of options available to displaced leaseholders in regeneration schemes.
- 2.12 That the council should investigate how a similar approach to that set out in recommendation 2.10 above might be taken to assist home owners in the private sector.
- 2.13 That the council should, where appropriate, offer temporary rehousing for vulnerable leaseholders affected by major works programmes, with a requirement for leaseholders to meet associated charges for such properties.

3. Background

- 3.1 Estate regeneration schemes undertaken by the council or other social landlords, such as in South Kilburn, can involve serious disruption for residents, particularly where a scheme requires the demolition and replacement of existing housing. Brent has significant past and current experience in managing such schemes but there is a need to review the approach. In doing this, it should be emphasised that, in the majority of cases, the solutions are relatively straightforward: tenants will be able to move to a new home on similar tenure and rent terms, while most leaseholders will be in a position to buy a new home in the area or elsewhere, either outright or on a shared ownership basis. In most cases, moves will therefore be facilitated by voluntary agreement. However, experience in Brent and elsewhere indicates that there will often be a small number of households who, because they lack the resources or are vulnerable in some way, will not be able to take advantage of the standard options, particularly in areas of high house prices such as London. While the numbers involved may not be large, it is important that Brent's offer should be as comprehensive as possible and also applicable where new options could address issues of supply, mobility and best use of stock.
- 3.2 As well as representing good practice through a clear and up-to-date policy, two immediate issues prompt the need for review. First, objections against the Compulsory Purchase Order (CPO) covering Chippenham Gardens in South Kilburn require that the council demonstrate that it has given due consideration to the options available to affected leaseholders and has led to the conclusion that this should be reflected in published policy. Second, developments in connection

with LB Southwark's programme on the Aylesbury Estate have potentially significant implications, while government and the Mayor have published relevant guidance that needs to be taken into account. Beyond these immediate drivers, there is also an opportunity to implement best practice.

- 3.3 In September 2016 LB Southwark's application for a CPO affecting several leasehold properties on the Aylesbury estate was rejected by the Secretary of State, taking account of a Planning Inspector's assessment. An initial application for permission to seek judicial review was refused in late 2016. However, the council subsequently renewed their permission application by seeking an oral hearing and thereafter the Secretary of State withdrew its decision to refuse to confirm the CPO and agreed that there will be a further public inquiry and the Secretary of State will need to reach a fresh decision in light of that. The public inquiry is scheduled for January 2018.
- 3.4 While some of the Inspector's concerns were specific to the Southwark scheme, wider questions centred on the citing of the European Convention on Human Rights and the Public Sector Equality Duty. In summary, the Secretary of State in his Decision Letter took the view that the difference between Southwark's valuation of leaseholders' properties and the cost of new homes in the borough could force them out of the area and that this could constitute a breach of Article 1 of the First Protocol to, and Article 8 of, the European Convention on Human Rights, which entitles a person to peaceful enjoyment of their property.
- 3.5 With regard to the Public Sector Equality Duty, identified negative impacts highlighted the needs of elderly leaseholders and others, including impacts on giving and receiving care and the education of children. The Decision Letter stressed that, since 67% of the population on the Estate were of BAME origin, *"it is highly likely that there is a potential disproportionate impact on the elderly and children from these groups, who are likely to dominate the profile of those remaining on the Estate and who are therefore likely to have to move out of the area if the Order is confirmed"*.
- 3.6 The possibility of further legal challenge or revisions to proposals that would meet the objections remains and it is important not to exaggerate the potential implications. It could be argued that human rights and equality issues, like other concerns, arise from actions or failings in that particular case. However, it is clear that the case could be drawn on by objectors to other schemes and their advisers and that programmes in London are more likely to face the market price barriers that underlie the problem. The key point is that it is essential that any regeneration scheme gives due consideration to the circumstances of and the options available to leaseholders and to the equality and human rights implications of any proposals. Most importantly, the case highlights the need for early, continuing and meaningful engagement with leaseholders and tenants collectively and individually to identify

barriers and agree solutions that are practical, legal and proportionate at an early stage.

- 3.7 A revised approach within regeneration schemes offers the opportunity to consider wider application. In the context of high levels of housing need, new supply is a primary objective but it is also essential that the council makes best use of its existing stock and there is potential to contribute to both aims. There are significant levels of under-occupation in the social housing stock. 61 households are currently registered on Locata with the intention of downsizing but they represent only a fraction of the total number of households in this position. The number of households successfully moving to smaller homes is low, despite the award of high priority on the Housing Register and the offer of financial incentives. Research into under-occupation indicates that successful schemes rely less on financial incentives and more on provision of one-to-one support and tailored solutions, matching offers closely to tenants' wishes. The potential to offer "bespoke" solutions to increase mobility is considered in more detail below.

4.0 The Mayor's Draft Guidance on Estate Regeneration

- 4.1 The Mayor has published a consultation draft of his *Good Practice Guide to Regeneration*. This has no statutory force but the council will need to pay regard to it since the guidance or aspects of it will be incorporated into a revised London Plan and London Housing Strategy, with which Brent's policies need to show general conformity. The Guide covers the treatment of leaseholders and tenants, stressing the need for early consultation and engagement, including the use of independent advisers and extra support for vulnerable households and the need to offer appropriate, affordable rehousing options, although the guidance is limited and does not cover all possibilities.
- 4.2 Brent's response to consultation welcomed the proposals but urged further consideration of some aspects. The Guide broadly reflects Brent's existing approach to tenants, encouraging policies that limit the number of moves involved, accepting a right to return and securing new homes at the same or similar rent levels and with an appropriate number of bedrooms. This represents best practice but more clarity would be helpful, for example in acknowledging that new homes will, or should, offer improved accommodation for returning or displaced tenants and that some increase in rent, within reasonable limits and reflecting local affordability issues, may be expected. Experience in South Kilburn suggests that calculation of both social and target rents will usually result in an increase. The guidance could also be more specific about the desirability of an offer in which tenants on social rents and affordable rents are offered new homes on similar terms.
- 4.3 For leaseholders, the Guide stresses that a mutually agreed acquisition is preferred and an offer at market value with home loss and disturbance payments agreed at an early stage is desirable (as well as

being a legal requirement). Our response suggested that the best approach to valuation is to use the District Valuer, whose impartiality is clear. The Guide cites the basic options considered below, but only mentions that other approaches are available. The intention is that Brent should offer a suite of options capable of tailoring to individual circumstances, in line with DCLG guidance which goes further than the Mayor's Guide and notes the use of shared ownership, shared equity, home swap, early buy-back and cash back deals where leaseholders carry out some completion works themselves, enabling personal choice in some aspects of a new home. Reversion to a tenancy is also an option, although potentially unattractive to leaseholders unwilling to give up ownership.

- 4.4 Where agreement cannot be reached, it may be necessary to use a CPO in the last resort. It is important that leaseholders' individual and collective needs and wishes are recognised and met, while balancing this against the wider benefits of regeneration to the community. London's high market values present a barrier to many households wishing to remain in their area and, however wide the menu of options, some or all may not be affordable or practical in a minority of cases. Early and transparent engagement, with independent advice and support, will be essential in clarifying what is and what is not possible.
- 4.5 In almost any scheme, sales will be essential to finance new affordable housing – a legitimate aspect of an authority's strategic housing responsibilities. Displaced leaseholders are likely to face higher values and therefore higher costs in new build homes and this needs to be discussed at an early stage, acknowledging the difficulties while highlighting the longer term benefits of an improved local environment and an uplift in the value of homes that is more likely to be sustained post-regeneration. It is also worth considering whether leaseholders should be informed of the potential impact of regeneration (whether or not there are existing plans) when they first take on a lease, as a matter of good practice. In addition, it may be advisable to consider whether future leases should explicitly reflect these issues.
- 4.6 The rights of leaseholders and the duties of local authorities in relation to compensation are set out in the statutory compensation code largely contained in legislation, most importantly the Land Compensation Acts 1961 and 1973 as amended and in decided cases. The code is usually the starting point for negotiations in relation to compensation, whether land is acquired by agreement or compulsorily. In summary, the standard first step is to agree voluntary purchase at market value, with the opportunity for the leaseholder to obtain their own valuation, normally funded wholly or partly by the council. Market value assumes a willing buyer and seller but is also based on the principle of equivalence: that is, the owner of the property should not be better or worse off than before the regeneration proposals. Market values on estates are generally lower than in other market segments, while the equivalence principle means that councils cannot normally offer an

artificially high price that would leave the seller better off, although the determination of compensation is not a precise science and there may be differing views about market value and the assessment of compensation. An acquiring authority therefore has some flexibility when determining compensation payments. In addition, the decision in the Aylesbury case suggests that there may be scope to offer some kind of enhanced value over and above market value, and that in some circumstances the making of "ex gratia" payments, to cover costs and losses falling outside the statutory compensation code may be justified - for example, to mitigate particular adverse impacts of dispossession on a particular occupier. Where agreement cannot be reached, a CPO can be sought, subject to the same valuation process. Displaced households are entitled to statutory Home Loss and Disturbance payments, with some flexibility around the inclusion of costs associated with moving such as legal fees.

5.0 Detail – Residents in Regeneration Areas

- 5.1 This section sets out proposals in relation to residents obliged to move due to regeneration programmes, while Section 6 covers wider application, both within and outside regeneration areas. Officers are confident that current arrangements for consultation, engagement and support in regeneration schemes represent good practice, conform to DCLG and draft Mayoral guidance and provide the right basis for a revised policy and no further changes are proposed on this. In South Kilburn the council has held early, extensive and continuing consultation and employed an independent adviser to support residents, who have been closely involved in developing the Masterplan and the Supplementary Planning Document, both recently reviewed and revised. The Masterplan provides the main mechanism through which the scheme is monitored and reported on.
- 5.2 In establishing rights to compensation and rehousing, it is necessary to distinguish between different modes of occupation as summarised in the table below. Note that the balance between resident and non-resident leaseholders is variable and each scheme will have its own characteristics. For example, in South Kilburn, 13 of 17 leaseholders are resident in Peel, while 3 of 8 are resident in Wordsworth House.

Occupancy Status	Housing Options	Compensation
Resident Leaseholder – Normally in occupation for 12 months prior to council notification of intention to acquire	Purchase in regeneration area or elsewhere, including shared ownership and shared equity Reversion to tenancy	Full market value, Home Loss and Disturbance payment plus related expenses.
Non-resident Leaseholder – e.g. owns or rents a home elsewhere and rents out the relevant	No obligation to rehouse in most circumstances. Leaseholders temporarily absent would be classed	Full market value plus compensation (Basic Loss Payment at a lower level than resident leaseholder)

property	as resident.	
Secure Tenant	<p>Offer of new property in regeneration area or option to move to another part of the borough.</p> <p>Subject to Local Lettings Plan, which may vary from the council's main Allocation Scheme</p> <p>Where agreement cannot be reached, council can seek possession if suitable alternative accommodation is made available</p> <p>One move is the norm, but a temporary move prior to a permanent offer may be necessary in some cases</p>	Home Loss and Disturbance Payment
Tenant of non-resident Leaseholder	No rehousing obligation but, in some cases, households may be able to make a homelessness application	Advice and assistance in finding a new rented home, usually in the private rented sector
Licensee (temporary accommodation)	Where properties are in use as temporary accommodation for households owed a homelessness duty, a move to alternative temporary accommodation or permanent rehousing would be offered in line with the council's legal obligations and homelessness policies. This would not fall into the options set out in this report.	As the property is occupied under a licence, there is no entitlement to compensation but advice and assistance would be available on the same basis offered to all households in temporary accommodation.
Unauthorised occupant – e.g. squatter or illegal sub-tenant	No rehousing obligation but, in some cases, households may be able to make a homelessness application	Advice and assistance in finding a new rented home, usually in the private rented sector

5.3 It is worth emphasising that, to qualify for full compensation and rehousing options, leaseholders must be resident at the relevant point

in the process, usually defined as 12 months before a set date, normally at the point the council announced its intention to proceed with purchase and/or CPO. This is not an absolute cut off and the key distinction is that the property should be the occupier's only or permanent home. For example, a buy-to-let landlord who is renting the property out would not be resident. A leaseholder who is temporarily absent, for work or other reasons, and is renting a home elsewhere would be classed as resident. It is also a requirement that a leaseholder or tenant must have owned or rented the home for 12 months to qualify for Home Loss payments. A non-resident leaseholder will receive market value for the property and other compensation at a lower level than Home Loss payment but will not be entitled to take up rehousing options.

- 5.4 The basic options offered by most boroughs – market purchase in the area or elsewhere and shared ownership – are all available in Brent but the aim is to go further, to maximise choice and secure a better match with individual circumstances. Any policy is unlikely to cover all possible permutations and there will be a need for flexibility in complex or sensitive cases where a solution outside general policy may be called for; the proposed policy is intended to be a guide to residents and officers, not a rigid set of rules. The following paragraphs summarise the current and proposed options, while Appendix 1 provides some comparative information on the approach taken by other London boroughs, many of whom have undertaken or are in the process of similar reviews. In all cases, the underlying principles are:
- There will be early and detailed engagement and advice and support will be offered, collectively and individually.
 - A presumption that affected tenants and leaseholders will be supported to remain in the area wherever possible.

5.5 Market Purchase in the Regeneration Area

- 5.5.1 This option is currently available and will remain the default position. All displaced leaseholders will be offered the opportunity to purchase one of the new homes, with advice and support available as needed.

5.6 Market Purchase Elsewhere

- 5.6.1 Displaced leaseholders may choose to buy a property anywhere else if they do not wish to remain in the area or decide that it is not affordable and do not wish to pursue an alternative option. This option is currently available. In addition, there may be potential to combine this approach with the council's current programme of acquisitions of market housing.

5.7 Shared Ownership

5.7.1 Under a shared ownership arrangement the leaseholder purchases a proportion of the equity, with the housing provider retaining ownership of the remainder. Rent is payable on the proportion retained by the provider in addition to any mortgage payment. It is usually expected that the price received for the original home, any home loss payment (usually 50%, although some boroughs require 100%) and any other savings or capital (usually on a voluntary basis or above a set limit) will contribute to the purchase. Most schemes assume a purchase of at least 25% of the equity, although it would usually be possible for a leaseholder to purchase a higher share. This option is currently available. As with outright purchase, there is potential to combine this approach with the council's current programme of acquisitions of market housing in limited cases where this could improve affordability and choice.

5.8 Shared Equity

5.8.1 Resident leaseholders use funds available from buyback to purchase a percentage of the equity of a new property as with shared ownership. Any value gap is then met by the council or a development partner, depending on the nature of the regeneration scheme and is entered as a charge against the property. The leaseholder will not pay rent on the equity they do not own.

5.8.2 A shared equity option has been offered to resident leaseholders in South Kilburn but has not been used extensively to date. For example, on the Argo scheme, three of five possible shared equity units were taken by existing leaseholders. On the current Kilburn Quarter development it is anticipated that five of six units will be taken by existing leaseholders. Usually, it would be expected that the buyer would use all of the proceeds from the buyback and a proportion of any Home Loss payment and a contributions from savings as above. The purchaser retains an option to buy out the council's share at a later date, either wholly or in part, but will not pay rent or interest on the equity retained by the council.

5.8.3 This model can make purchase more affordable than shared ownership, where a rent charge would apply, while retaining the option of outright ownership in the future. On the other hand, it involves a significant upfront contribution from the council which may not be repaid for many years, albeit that any increase in value would be captured. While the retained share is an asset that will eventually be realised, there is a loss of rental income in the interim. There is also some risk associated with any future fall in property values, although this is difficult to assess and, on past market performance, might be regarded as minimal. Given the financial commitment required from the council in such cases, it is proposed that a minimum limit on the amount of equity purchased by the leaseholder should be imposed at 50%.

5.8.4 An alternative is to charge rent on the council's share. LB Ealing is considering a scheme through which a rent charge of 3% is payable after five years (in line with the government's Social HomeBuy1 scheme for shared ownership). A "voluntary charge" arrangement would also apply, allowing the leaseholder to ask for a further charge against the property to cover the rental element in cases of hardship. It is not proposed that this approach should be taken at this stage. Charging a rent, albeit at a reduced level, makes the option less attractive and less affordable to leaseholders and blurs the distinction between this and shared ownership.

5.8.5 In principle, a shared equity approach could be applied to market purchase within the regeneration area or elsewhere in the borough or outside. Again, there is potential to combine this approach with the council's current programme of acquisitions of market housing.

5.9 Leasehold Swap

5.9.1 This enables a leaseholder to 'transfer' their equity into a void council social rented unit that is not due for demolition. This could apply to retained units in South Kilburn (or future schemes) or it could be made available more widely to apply to all council voids of appropriate size and value. Any difference in value would be made up by the council or the leaseholder as appropriate. This 'swap' would reduce upfront acquisition costs but involves the loss of a unit that would otherwise be available at a social rent. The quid pro quo therefore is that an additional replacement social rented unit would need to be provided in the relevant phase. This would require an amendment to the Allocation Scheme and a review of this is planned.

5.9.2 Although this appears to be an attractive option, experience in other boroughs where it is used suggests that such swaps can be difficult to facilitate and happen rarely. However, this should not preclude its use.

5.10 Advance Acquisition and/or Compensation

5.10.1 In some cases, it will be to the council's advantage to acquire properties that are scheduled for demolition in advance of the regeneration programme being implemented. For example, in cases where a leaseholder has an urgent need to move for other reasons. A pilot project has been run, with a limited budget to allow for the purchase of a small number of homes.

5.10.2 While there are costs associated with this approach, it provides additional flexibility and, where appropriate, the ability to use the vacated property in other ways, for example as temporary housing with associated savings on temporary accommodation costs.

5.10.3 To assist in mitigating the impact of displacement and enable residents to remain in the area (should they wish to do so), it is additionally proposed that, in some cases, the council should approve advance compensation payments before a CPO is confirmed; for example, following a Cabinet resolution to proceed and the consequent suspension of the Right to Buy. An additional option would be to confirm purchase with delayed completion: that is, pay the leaseholder a large proportion (say 90%) of the value with the remainder paid on vacation. This would give the leaseholder more time as well as the necessary funds to buy. It is also proposed that consideration should be given to a similar approach for tenants that would allow the offer of home loss prior to action to seek possession through Ground 10A of Schedule 2 to the Housing Act 1985. Making such payments at an earlier stage would not involve significant additional costs since the payments are budgeted for in any event.

5.11 Reversion to tenancy

5.11.1 This allows a leaseholder who no longer wishes, or cannot afford, to be a property owner to be offered a tenancy, either within the regeneration area or elsewhere. One difficulty here is that, having received payment for the sale plus other payments, such leaseholders would have assets well above the £50,000 limit imposed by the council's Allocation Scheme, although they may also have an income below the current limits, set out below:

- 1 bed need – £35,000 per annum
- 2 bed need – £45,000 per annum
- 3 bed need – £55,000 per annum
- 4 bed need – £70,000 per annum

5.11.2 This need not be an insuperable barrier since the scheme provides for offers of social housing to be made in exceptional circumstances, through the Allocation Panel and with the approval of the Operational Director of Housing. The scheme also allows for the application of Local Lettings Policies, for example where this would contribute to protecting existing stable communities and wider community objectives, as has already been the case in South Kilburn. Finally, the scheme provides a discretionary power for the Operational Director to award additional priority and approve offers of housing. Section 167 (2E) of the Housing Act 1996 (as amended) enables housing authorities to allocate accommodation to people of a particular description, whether or not they fall within the reasonable preference categories. However, local authorities can only allocate social housing in accordance with their own allocation schemes. Where a policy change is involved as opposed to using discretion in exceptional circumstances for a small number of cases and the policy change is not in accordance with the Council's allocation scheme, this will require an amendment to the Council's allocation scheme.

5.11.3 Reversion to tenancy is offered by most local authorities, usually with conditions relating to a rigorous assessment of the household's financial resources and any vulnerabilities. However, there are some disadvantages from the council's perspective. First, this approach requires offering a home that would otherwise be available to a household with high priority on the Housing Register; effectively, the council would be giving up a unit of social housing. The purchase price would reflect this and would generally be assessed at tenanted rather than vacant possession value, reflecting the loss of the rented unit through a reduction of around 25-30% of the market value but this only partly mitigates the impact. In addition, any new home let under a secure or fixed term tenancy would still be subject to the Right to Buy and there is a risk that a displaced leaseholder could, perhaps with support from family and using the resources available from the sale, submit a Right to Buy Request at a later date. Although the number of such cases is likely to be small overall and the number who might seek to exercise the Right to Buy even smaller, this is a risk that should be considered.

5.11.4 An alternative approach is to limit reversion to tenancy to private sector properties purchased by the council outside the HRA, which would not be subject to the Right to Buy. These properties would be let at higher rents but within LHA limits and therefore eligible for Housing Benefit, although in the short term the capital available from the sale would mean that HB would not be payable (as would be the case with a council tenancy). There is also potential to offer greater choice in terms of area and type of property. In such cases, full market value rather than tenanted value would be offered in recognition of the fact that the council would not be surrendering use of a social home. This option is more advantageous to the council since it does not involve loss of a social rented unit and the RTB would not apply to property outside the HRA. It is therefore recommended that this approach should be taken in the small number of cases where reversion to tenancy is the preferred option or in other cases where leaseholders or tenants opt to rent privately. A policy change of this nature regarding the reversion to tenancy proposal as set out in this section 5.11 would also require an amendment to the Council's Allocation Scheme.

5.12 Vulnerable Households

5.12.1 Investigation of published policies suggests that the majority of local authorities have a limited set of approaches to the needs of vulnerable leaseholders. In most cases, advice and assistance is made available – for example where households need support with the process and age, health or low income are identified as barriers. In terms of specific rehousing options, the standard approach appears to be to offer reversion to a tenancy if other options are not appropriate or affordable, usually based on a detailed and evidenced assessment of need. For displaced tenants, the option of a move to sheltered or supported

housing – for example Extra Care provision through the NAIL programme – is available in Brent.

- 5.12.2 In general terms, it is likely that older leaseholders are more likely to struggle to afford the standard options. Given the age profile within the council's stock, it is also likely that there will be relatively large numbers of older households who exercised the RTB some time ago. While some may have paid off or significantly reduced their mortgages, their capacity to borrow to meet any gap in valuation will be very limited. While the tenancy reversion option may be appropriate in some cases, a tailored approach, based on individual engagement, is needed for this group.
- 5.12.3 This should include consideration of the extension of shared ownership and shared equity options in sheltered or supported housing provided by the council, RPs or private sector providers, although this would require the agreement of the provider and may need to be arranged on a case-by-case basis. It should also include the opportunity for reversion to tenancy, on similar terms to those set out at 5.11, in sheltered, Extra Care or other specialised accommodation as appropriate. In such cases, it is likely that an affordable housing provider, usually the council or an RP, would be involved, with tenanted value the basis for compensation. There are also potential implications for social care costs and a full assessment of potential costs and savings will be undertaken prior to consideration by Cabinet.
- 5.12.4 It is proposed that an officer will be recruited to act as the main liaison with all affected leaseholders, including potentially vulnerable households. This officer would provide support in taking leaseholders through the buy-back process and the search for alternative accommodation, as well as offering information and advice on the available options such as Shared Equity.

5.13 Displaced Tenants

- 5.13.1 With regard to council tenants, Brent's approach has been to develop specific Local Lettings Plans for each phase of any scheme and one is in place for South Kilburn, giving priority to tenants required to move. This includes a guaranteed offer of suitable accommodation within the scheme or elsewhere in the council's stock, depending on preference and availability of suitable accommodation. Where this cannot be achieved on a voluntary basis, the council can rely on Ground 10A of Schedule 2 of the Housing Act 1985, subject to having secured formal approval from the Secretary of State for the relevant redevelopment proposal. The court will require that suitable alternative accommodation is available where this ground is used.
- 5.13.2 Individual advice and support is made available, alongside general information for tenants. Tenants will, in most cases, have the option to remain on the estate and the type and size of property to be offered is

based on an individual needs assessment, taking account of family size, any health issues and other factors.

6. Supply, Mobility and Under-Occupation

6.1 As noted earlier, a wider application of the principles and options set out above is desirable to meet the council's wider objectives around housing supply and best use of available stock. The following paragraphs examine the potential.

6.2 Under-Occupation

6.2.1 Significant demand for larger homes, including from households in temporary accommodation, runs alongside significant levels of under-occupation. The council offers high priority on the Housing Register and financial incentives but this has had limited impact. There are currently 61 households registered with Locata seeking to move to a smaller home, although this by no means reflects the full extent of under-occupation. In this context, there is obvious potential for the council's acquisitions programmes to target properties tailored to the wishes of under-occupying tenants, expanding opportunities to meet expectations about property type and area. As well as private sector acquisitions, the council is securing properties from the private sector through Property Services which will fall within the HRA and it is proposed that the potential for the programme to secure properties to facilitate downsizing moves should be explored, particularly given the lower rents in such homes. In addition, regeneration schemes such as South Kilburn are delivering high quality new homes that could offer a desirable option to households seeking to downsize within existing prioritisation mechanisms on the Housing Register.

6.2.3 In some cases, it may also be desirable for the council to facilitate moves for leaseholders or to buy back properties that could assist in tackling under-occupation. There are two main possibilities. First, it is proposed that the council should consider targeted acquisition of one bedroom properties where leaseholders are seeking to sell, in order to make them available to tenants who are under-occupying. At this stage, this is proposed on the basis that a full cost benefit analysis would be undertaken and in the expectation that the number of such acquisitions is likely to be small. Second, it is proposed that the council should consider buy-backs where a leaseholder needs to move on grounds of ill-health, disability or vulnerability. This would include the full range of alternative housing options set out in section 5. Again, further work will be undertaken to assess costs and savings. It may also be possible to extend this approach to owners in the private sector, for example where the council is incurring significant social care costs which could be reduced by a move to more appropriate accommodation on a similar basis to that proposed for leaseholders displaced in regeneration schemes, potentially in return for a reduced purchase price that would enable the council to acquire and use the

property as temporary or permanent accommodation at LHA rents. Again, further work would be required to identify potential costs and benefits in detail.

- 6.2.6 Finally, there is a need to consider the needs of vulnerable leaseholders facing temporary displacement from their homes due to major improvement works. At present, the council will offer temporary housing to affected tenants but not to leaseholders. While this is an appropriate approach in many cases, it is proposed that there should be some flexibility to allow for temporary rehousing of leaseholders where it is clear that they would be unable to make their own arrangements. The leaseholder would however be required to fund any rent and/or service charges associated with the procured property.

7.0 Financial Implications

- 7.1 It is challenging to put a monetary value on the recommendations in this paper because it is largely untested. The recommendations intend to ensure leaseholders are treated fairly and that the Council does not face higher costs from challenges in the CPO process.
- 7.2 Paying advance compensation payments even before a CPO is confirmed or a slightly enhanced amount might not be more expensive than the costs attached to a delayed scheme or it might be less in some instances.
- 7.3 Shared equity might offer a possible long-term investment benefit to the Council as well as give the leaseholders flexibility. The Council has little experience with shared equity and there is an upfront cost. To illustrate this, assuming 103 leasehold properties were to be effected affected. Assuming 20% of leaseholders are interested, shared ownership is set at 50% per £600k average property and no rent is charged on the retained element, this would suggest a Council investment of £6.2m. This investment would not be realised until the unit was sold.
- 7.4 The costs attached to leasehold swaps when properties are void and private rented options would be covered within existing budgets. However, reversion to tenancy means that someone else who would have been housed by the council will need private housing or will have to wait longer for a social housing unit. There is a risk that this individual would need to be accommodated privately at a cost above what the individual might receive in housing benefits or that continued occupation of temporary accommodation will result in additional cost to the council. However, this impact can be mitigated in that, if the proportion of lettings generally available to homeless households remains the same, there should be no impact on the pace at which such households are rehoused.

- 7.5 The recommendations allow for additional option to the ones that are currently available. The council would need to assess the financial implication on a case by case basis depending on which of the options best fit the circumstance.
- 7.6 There is the cost of recruiting an officer, who would be at a higher grade than the current role (approximately £10k/year additional to budget). This person would help individuals through the leaseholder buyback process, with a particular focus on vulnerable adults. This would be funded within existing budgets.

8.0 Legal Implications

Compulsory Purchase Orders

- 8.1 The Council has power to make a compulsory purchase order under section 226(1) (a) of the Town and Country Planning Act 1990 if it thinks that the acquisition will “facilitate the carrying out of development, redevelopment or improvement in relation to the land to be acquired”. Under section 226(1) (A) the Council must not exercise the power under sub paragraph (a) unless it thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects – (a) the promotion or improvement of the economic wellbeing of their area; (b) the promotion or improvement of the social wellbeing of their area; (c) the promotion or improvement of the environmental wellbeing of their area.
- 8.2 Compulsory purchase orders must only be made if the Council is satisfied that there is a compelling public interest to do so. The Compulsory Purchase guidance 2015 (the 2015 Guidance) states “*A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.*”
- 8.3 Furthermore, in making the order there should be no impediments to its eventual implementation. The 2015 Guidance advises (in part): “*In demonstrating that there is a reasonable prospect of the scheme going ahead, the acquiring authority will also need to be able to show that it is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account. These include the programming of any infrastructure accommodation works or remedial work which may be required, and any need for planning permission or other consent or license. Where*

planning permission will be required for the scheme, and has not been granted, there should be no obvious reason why it might be withheld.”

- 8.4 A compulsory purchase order must only be made if the Council is satisfied that there is a compelling public interest to do so. Paragraph 13 of the 2015 Guidance states:

“A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.”

- 8.5 Article 1 of the First Protocol of the European Convention on Human Rights (“ECHR”) states: *“Every natural or legal person is entitled to peaceful enjoyment of his possessions”* and *“No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law.”*

- 8.6 Article 8(1) of the ECHR states: *“Everyone has the right to respect for his private and family life, his home and his correspondence.”* However, this is a qualified right. Article 8(2) states: *“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

- 8.7 If any duly made objections to the making of a compulsory purchase order are not withdrawn, the Secretary of State must hold an Inquiry and consider the conclusions and recommendations of the Inspector before confirming the Order.

- 8.8 The acquisition procedure is governed by the Acquisition of Land Act 1981, the Compulsory Purchase of Land Regulations 2004 and the Compulsory Purchase of Land (Vesting Declarations) Regulations 1990.

- 8.9 Before and during the compulsory acquisition process, the Council is expected to continue the process of seeking to acquire the properties sought by negotiation and private agreement:

Ground 10A

- 8.10 The Council is required to obtain the approval from the Secretary of State when seeking to re-housing secure tenants who will not leave the

Council properties that are due to be demolished pursuant to a redevelopment scheme. Before seeking approval the Council is required to consult with tenants. Approval will enable the Council to rely on Ground 10A of Schedule 2 to the Housing Act 1985 in County Court proceedings to obtain possession of the dwellings let under secure tenancies and provide the tenants with suitable alternative accommodation pursuant to its redevelopment scheme.

Allocations

- 8.11 The Council has to allocate housing accommodation in accordance with its allocation scheme pursuant to section 167(8) of the Housing Act 1996. The Council's Allocation Scheme allows for local allocation policies to be developed for regeneration schemes, including in South Kilburn.

Public Sector Equality Duty

- 8.12 Under the Equality Act 2010, the Council has a duty to have due regard to the need to: eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited by the Act; advance equality of opportunity between people who share a protected characteristic and people who do not share it; and foster good relations between people who share a protected characteristic and people who do not share it. This is the Public Sector Equality Duty (PSED). The protected characteristics covered by PSED are as follows: age, disability, gender, gender reassignment, marriage and civil partnership (but only in respect of eliminating unlawful discrimination), pregnancy and maternity, race (this includes ethnic or national origins, colour or nationality), religion or belief (this includes lack of belief) and sexual orientation.

9.0 Equality Implications

- 9.1 A central intention of this report is to address the risk of differential impacts for households required to move as part of regeneration programmes, highlighting the issues arising from the Aylesbury Estate programme in Southwark. It should also be stressed that these issues arise from the consequences of such programmes, not from the proposals set out in this report, which are intended to identify and mitigate any potential/likely negative implications and maximise the positive equality outcomes for affected individuals and groups with protected characteristics and/or known vulnerability. This report recognises that full consideration must be given to residents and leaseholders with protected characteristics, particularly people with disabilities and / or other types of vulnerabilities due to age (both older adults, children and young people), childcare and/or caring responsibilities and support, socio-economic status (lone parents and large families). Due regard must also be paid to black, Asian and minority ethnic and religious groups (e.g. community ties and wider community infrastructure, needs of large families, support networks, etc.).

- 9.2 The Council must also ensure that the options put forward to re-house residents and leaseholders, so far as possible, provide reasonable and affordable alternatives that enable them to remain in the area and maintain their family and community ties, as per Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights. Affected residents and leaseholders should be engaged in the process of identifying the options and alternatives available to them. Again, this report seeks to extend the options available in order to meet these requirements.
- 9.3 An initial Equality Analysis is attached at Appendix 2. The development of the final policy will be informed by a full analysis and consultation. As noted above, beyond the development of policy, it will be necessary to carry out specific analysis with regard to any individual regeneration programme that involves displacement of existing residents with protected characteristics. Most importantly, it will be necessary to show that, where a differential impact has been identified, appropriate steps have been taken to mitigate any negative effects.
- 9.4 Any regeneration scheme would need to include not only an overall assessment of equality implications but a clear programme of individual engagement with leaseholders from an early stage. It will also be necessary to ensure that equalities and human rights considerations are kept under review throughout the process.

10.0 Staffing/Accommodation Implications (if appropriate)

- 10.1 There are no immediate staffing or accommodation issues arising from this report beyond the cost of the additional officer referred to in paragraphs 5.14.4 and 7.4.

Background Papers

None.

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