



Cabinet
14 October 2019

**Report from the Strategic Director
Regeneration & Environment**

South Kilburn Queens Park (SKQP) LLP – Termination and the Option to Acquire Falcon Land

Wards Affected:	Kilburn, Queens Park
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt:	Part Exempt – Appendix 2 is exempt as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: “Information relating to the financial or business affairs of any particular person (including the authority holding that information)”
No. of Appendices:	Two Appendix 1 Ownership and Site areas Appendix 2 Financial Implications (Exempt)
S	None
Contact Officer(s):	Olga Bennet Head of Finance (Commercial and Projects) Email: Olga.Bennet@brent.gov.uk Tel: 0208 937 3337

1.0. Purpose of the Report

- 1.1. This report provides an update on the South Kilburn Queens Park Limited Liability Partnership (SKQP LLP) and seeks Cabinet’s authority to terminate the SKQP LLP Project Agreement and Members Agreement should it not be possible for the parties to resolve matters by 30 October 2019.
- 1.2. In order to give the Council the greatest flexibility to determine the future of the site, Cabinet’s approval is sought to enter into an options agreement to acquire the Falcon Public House. This would give the Council the right (but not the obligation) to acquire the site.
- 1.3. A further report will be made to Cabinet with recommendations on options for alternative ways to deliver the regeneration of Site 18.
- 1.4. For reasons of commercial confidentiality, an exempt appendix provides greater detail, including financial implications.

2.0. Recommendation(s)

That Cabinet:

- 2.1. Note the content of the report and appendices;
- 2.2. Agree to terminate the SKQP LLP Project Agreement and Members Agreement after 30 October 2019 should it not be possible for the parties to agree a solution with regard to outstanding conditions precedent;
- 2.3. Subject to termination of the SKQP LLP Project Agreement and Members Agreement pursuant to paragraph 2.2, agree that Brent Council enter into the option agreement to acquire the Falcon Public House site; and
- 2.4. Delegate authority to the Strategic Director of Regeneration and Environment in consultation with the Cabinet Member for Regeneration, Property and Planning, to exercise its option and agree terms for the acquisition of the Falcon Public House site.

3.0. Background

Brent Council is part of a 'conditional' limited liability partnership (LLP) with London & Newcastle Capital Limited ('LN') to bring forward the comprehensive redevelopment of land near Queens Park underground station ("**Site 18**") which is within phase 3a/3b of the South Kilburn Regeneration Programme. Cabinet authority for this was provided on 24 April 2017.

- 3.2 The LLP is 'conditional', meaning that until certain conditions ('conditions precedent') are satisfied, the partners are not fully committed to proceeding with the LLP's development of Site 18. In particular, the land is still owned by the respective partners and not transferred into the limited liability partnership.

The Site

- 3.3 Site 18 consists of Keniston Press (demolished), Premier House, Cullen House, the Falcon public house and the spur road.
- 3.4 The land in Site 18 is predominantly in the ownership of Brent Council with only the Transport for London Offices (Premier House) and the Falcon public house (owned by LN), that sit outside the Council's ownership.
- 3.5 Planning permission was granted for Site 18 in June 2012. The redevelopment of Site 18 was planned to provide 137 new homes of which 39 were to be affordable rent for existing secure tenants of South Kilburn, along with new public space, 1,270 sqm of commercial space, 959 sqm of office space and a new signalled junction at Kilburn Lane, as shown edged red on the Plan in Appendix 1.

Establishment of the Limited Liability Partnership

- 3.6 LN owned the Falcon public house site and was the developer partner for the private homes at Queens Park Place, opposite Site 18.

- 3.7 In April 2017, Cabinet approved Brent Council entering into a limited liability partnership with LN. The Council wanted to test whether better outcomes could be achieved by directly developing land as part of a limited liability partnership. This is in comparison to the traditional approach where a developer partner would provide a land receipt and enter into a development agreement for the Council.
- 3.8 The April 2017 Cabinet paper explained the rationale: “should the Council have the desire to take on the risk of acting as a developer and taking a scheme to full build, then working alongside a known and respected private developer would seem a good entry point. Furthermore establishing a partnership through a Joint Venture will have significant advantages to the Council and in particular for South Kilburn and should generate a higher level of financial return which can be reinvested in the wider South Kilburn regeneration programme to achieve the Council's social and economic objectives for the area.”
- 3.9 In March 2018, Brent Council and LN entered into a conditional agreement to bring forward the redevelopment of the whole Site 18 as both parties owned part of the site. Agreement becoming unconditional was subject to satisfying a number of conditions (‘conditions precedent’).
- 3.10 On 15th January 2018 Cabinet approved a loan facility of up to £40m (subsequently increased to £50m within the loan framework contained in that paper) to be made available to SKQP LLP for the development of Site 18.

4.0. Satisfying the Conditions Precedent

- 4.1 Since the establishment of the conditional LLP, all conditions precedent apart from two have been satisfied. The financial viability condition precedent has not been satisfied. The other outstanding condition precedent is in relation to acquiring Transport for London’s (TfL) existing freehold site and replacement of TfL’s office space within the scheme.
- 4.2 The agreement with LN specified a date by which all conditions precedent had to be satisfied in order for the partners to become irrevocably committed to the partnership (‘longstop date’).
- 4.3 The longstop date was previously extended to the 30 July 2019. This date has now passed. The Council and LN are now in a three-month period which gives the partners a further opportunity for dialogue (as specified in the agreement). Once this has concluded on 30 October 2019, either party can opt to terminate the agreement.
- 4.4 At that time, Brent Council could then choose to terminate the agreement and exercise its right (included in the Project Agreement) to enter into an option agreement to acquire the Falcon public house site at market value. This would give the Council the right (but not the obligation) to purchase the Falcon public house site within six months.
- 4.5 Currently the financial viability condition precedent cannot be satisfied with the current scheme constraints. The Council and LN will continue to seek to agree a solution prior to 30 October 2019 but in view of the nature of the condition

precedent, this appears unlikely and it is therefore recommended that the course described in para 4.4 above is followed should a solution not be agreed.

- 4.6 The Council's South Kilburn Regeneration Team will look at alternative routes for the delivery of site which may be purchasing LN's interest in the Falcon public house and the procurement of a delivery partner to develop the Queens Park/ Cullen House site.
- 4.7 It is recommended that the Falcon public house site is acquired should it not be possible for Brent Council and LN to agree a solution with regard to outstanding conditions precedent because:
 - 4.7.1 Owning the entire site would enable the Council to deliver the scheme as planning approved; subject to TfL agreeing to the Heads of Terms.
 - 4.7.2 The scheme as currently designed (for which outline planning permission has been received) would not be possible without the Falcon public house site. It is not straight forward to remove the Falcon public house site from the consented scheme. Brent Council has incurred costs in securing planning, site mobilisation, design and technical fees, as well as officer time. Therefore, any material change from the consented scheme would result in sunk costs.
 - 4.7.3 The majority of the affordable housing in the current scheme is also located on the Falcon public house site in order to facilitate early delivery of the homes.
 - 4.7.4 The planned highway improvements would not be possible without the Falcon public house site being part of the wider re-development.
 - 4.7.5 Owning the entire site would give the Council greater flexibility in determining alternative routes for the delivery of the site, since larger sites are less constrained.

5.0. Legal Implications

- 5.1. The agreement with LN contains clear provision as to steps the parties are contractually able to take should conditions precedent not be met. The 30th July long stop date for the conditions precedent to be met has passed and the parties are in a three-month period required under the agreement to resolve issues. If issues are not resolved by 30th October 2019, either party can opt to terminate the agreement.
- 5.2. The agreement with LN is categorised as a High Value Contract under the Council's Contract Standing Orders and Financial Regulations. In accordance with the Constitution, Cabinet authority is required for the termination of High Value Contracts.
- 5.3. Under the terms of an option agreement, an option to purchase the Falcon Public House Site will usually provide the Council with a period within which to exercise the option. Once the agreement has been entered into the decision whether or not to purchase the Falcon Public House Site rests with the Council.

An option notice will need to be served within the option period. The option agreement will lapse if the option notice is not exercised within the agreed time.

6.0 Financial Implications

6.1 Please refer to Appendix 2 of the report.

7.0 Equality Implications

7.1 It is anticipated that the new scheme (whichever way it is delivered) will provide high quality residential and commercial premises which will assist in improving the physical characteristics of the neighbourhood and will also help regenerate the area by attracting new retail business.

7.2 As with all other schemes that are part of the South Kilburn regeneration programme, full consideration must be given to residents and leaseholders with protected characteristics, particularly people with disabilities and / or other types of vulnerabilities due to older age, childcare and/or caring responsibilities, socio-economic status (lone parents and large families). Due to the ethnicity profile of the area, full consideration must also be given to black, Asian and minority ethnic individuals/groups. The Council must also ensure that the options put forward to secure 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.

Report sign off:

AMAR DAVE

Strategic Director Regeneration & Environment