

AGENDA ITEM: 5 Pages 1 – 8

Meeting	Cabinet Resources
Date	19 October 2010
Subject	Brent Cross Cricklewood Regeneration
Report of	Cabinet Member for Housing, Planning and Regeneration
Summary	This report sets out the final agreed terms pursuant to the Cabinet Report of 21 October 2009 that outlined the heads of commercial terms of the development agreement between the Council and Hammerson and Cricklewood Regeneration Ltd (CRL) to enable the regeneration of Brent Cross and Cricklewood. Key terms have remained broadly the same but the recent acquisition of the commercial interest of Brookfield Europe in CRL by Hammerson has required some detailed changes.

Officer Contributors	Stewart Murray, Director of Planning, Housing and Regeneration Tony Westbrook, Principal Project Manager, Regeneration Service
Status (public or exempt)	Public (with separate exempt report)
Wards affected	Childs Hill, Golders Green and West Hendon
Enclosures	None
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

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1. RECOMMENDATIONS

- 1.1 That the changes to the terms and conditions of the Development Framework Agreement (DFA) and the two Principal Development Agreements (PDA) regarding Brent Cross Cricklewood (as considered and approved by Cabinet in October 2009) which are set out in this and the accompanying consultants reports be approved subject to:**
- (a) All plans to be attached to the various documents being in forms to the Council's satisfaction;**
 - (b) The Council's consultants confirming that the historic costs schedule is a proper record of admissible costs for the current scheme;**
 - (c) Eversheds Solicitors being satisfied that the final documents reflect the approved terms; and**
- 1.2 That the advice of the Deputy Chief Executive & Chief Finance Officer be noted, that in the view of the Council's property advisors (CB Richard Ellis), that the DFA and PDA's represent best consideration for the Council's land assets.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet, 26 April 2004 (Decision item 8) – approved the adoption of the Cricklewood, Brent Cross and West Hendon Development Framework as Supplementary Planning Guidance.
- 2.2 Cabinet, 29 March 2005 (Decision item 6) – agreed to enter into a collaboration agreement with the development partnership (Cricklewood Regeneration Limited [CRL], Hammerson and Standard Life).
- 2.3 Cabinet, 5 December 2005 (Decision item 7) – approved, amongst other matters, that
- (i) the Eastern Lands Addendum be adopted as Supplementary Planning Guidance; and
 - (ii) the Eastern Lands Supplementary Guidance be incorporated into the Cricklewood, Brent Cross and West Hendon Development Framework.
- 2.4 Cabinet Resources Committee, 25 March 2008 (Decision item 16) – approved the outline terms so far agreed with the Brent Cross partners and Cricklewood Redevelopment Limited, including the proposals for the finalisation of the financial terms, be approved in principle subject to the outcome of Counsel's advice on procurement issues, and that the finally agreed terms for the Development Framework Agreement (DFA) and the Principal Development Agreements (PDAs) be reported to a future meeting of the Cabinet for approval.
- 2.5 Cabinet, 21 October 2009 (Decision item 7) – approved the terms and conditions of entering into the Development Framework Agreement (DFA) and the Principal Development Agreements (PDAs), subject to approval of the Brookfield Europe and Hammerson Guarantor companies by the Director of Finance and the Leader of the Council, and the approval of the appropriate land transaction and financial arrangements by the Secretary of State. The approval was also subject to agreement of the plans, the historic costs and the form of the legal documents.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Corporate Plan 2010-13 commits the Council to the following three priorities which are all relevant in terms of the Brent Cross Cricklewood regeneration proposals:
- Better services with less money;

- Sharing opportunities, sharing responsibilities; and
- A successful London Suburb.

Through the 2010/2013 corporate priority, 'A successful London suburb', the regeneration of the Brent Cross Cricklewood area will provide residents with new housing opportunities, new jobs, improved retail, transport and leisure facilities, and a new town centre

- 3.2 Through the Future Shape initiative, the Council is committed to developing a new relationship with its citizens, a one public sector approach and relentless drive for efficiency. The development of innovative partnerships with the private sector is intended to maximise the value of the Council's assets whilst ensuring the delivery of a high quality suburban environment which will limit the requirement for substantial intervention from the public sector in the future. The Brent Cross Cricklewood project involves working with the private sector in a way which reflects the partnership approach envisaged in the Future Shape initiative.

4. RISK MANAGEMENT ISSUES

- 4.1 Risk management issues remain as noted in the report to Cabinet on 21 October 2009, with the exception of the points below:
- 4.1.1 Previously, it was reported that the then CRL partners would each provide a financial guarantor. There will now only be one financial guarantor, namely Hammerson UK Properties plc. Details regarding this company are included in the accompanying exempt report. However, it is the view of Council officers that having a single developer, Hammerson, in charge of CRL, will not necessarily make the scheme less likely to be delivered – indeed, the opposite may well be true.
- 4.1.2 Scheme financial viability remains a critical issue. However, during 2010 the development partners have retained their belief in the long term prospects of the scheme to continue working with a view to achieving a suitable planning consent and entering into the commercial agreements, very largely in line with all previous commitments, as outlined in the report, which is extremely encouraging for the eventual delivery of the Brent Cross Cricklewood Regeneration.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 The Council is committed to improving the quality of life and wider participation for all the economic, educational, cultural, and social and community life in the Borough. This is achieved by pursuing successful regeneration of the Borough's regeneration areas. This will benefit all sections of society and the Borough's diverse communities who are seeking housing and contribute to addressing the shortage of housing in the Borough across all tenures.
- 5.2 The development of Brent Cross will make a significant contribution to the provision of additional, high quality affordable housing units in the Borough as well as providing employment through the creation of a new town centre with leisure, health and educational facilities. Extensive consultation has been undertaken with the community to ensure that the scheme reflects local needs as well as securing the future of North London's only regional shopping centre. The approach taken aims to secure the delivery of a cohesive and successful suburban environment which will help to address the deprivation which is concentrated in parts of the Borough.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 The report to Cabinet on 21 October 2009 covered the commercial deal in considerable detail, so this report does not repeat the detailed considerations approved by Cabinet then. However, the key commercial terms are set out in the accompanying exempt report.
- 6.2 One key change has to do with how the Council meets its Section 123 obligations under the Local Government Act 1972 (as amended) for this transaction. This legislation provides that the Council has to obtain the best consideration reasonably obtainable for all land transfers. It was previously recommended that due to the length of time involved, that it was advisable to seek the consent of the Secretary of State's consent to the deal, on the basis that in the future the transaction may be seen not to represent best consideration. However, the Council has received further advice from its external legal advisors, Eversheds LLP that the Council is empowered to dispose of the land pursuant to S233 of the Town and Country Planning Act 1990, which applies to land transfers of land acquired or appropriated by the Council for planning purposes, and can be used in place of S123 of the Local Government Act 1972. This advice is included as an appendix to the accompanying exempt report. The Council's property advisors on this project, CB Richard Ellis (CBRE) have now also come to the firm view that by considering the Brent Cross and Cricklewood Regeneration Limited commercial deals as one linked transaction (which they clearly are) and in the light of the various changes mentioned above, CBRE have been able to provide the Council with an Advice Note dated September 2010, which is also attached to the accompanying exempt report, confirming that the Brent Cross Cricklewood Regeneration Project does, in their view, represent best consideration for the Councils land assets under s233 of the Town and Country Planning Act 1990. The land affected will need to be appropriated for planning purposes at the appropriate time.
- 6.3 The Chief Finance Officer is satisfied that that on the basis of the property and legal consultants advice, the proposed transaction represents best consideration for the Council's land assets (as defined in S233 of the Town and Country planning Act 1990).
- 6.4 This report therefore recommends that the Cabinet Resources Committee notes the advice of the Council's property consultants in this respect, and also the recommendation of the Chief Finance Officer, that this transaction represents best consideration under Section 233 of the Town and Country Planning Act 1990.
- 6.5 The legal documentation further provides that in due course, if any of the specific land transfers require consent from the Secretary of State, that this can be obtained in the future, as deemed necessary by the Chief Finance Officer. This is referred to in more detail in the legal report from the Councils legal advisors, Eversheds LLP, which is attached to the accompanying exempt report.

7. LEGAL ISSUES

- 7.1 These are addressed in the main body of the report and in the Appendices to the accompanying exempt report by the Council's legal advisors on this project, Eversheds LLP.

8. CONSTITUTIONAL POWERS

- 8.1 The Council's Constitution in Part 3, Responsibility for Functions, states in paragraph 3.6 the functions delegated to the Cabinet Resources Committee, including all matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council.

9. BACKGROUND INFORMATION

9.1 Executive Summary

- 9.1.1 The Council is the freehold owner of the Brent Cross shopping centre, car parks and surrounding lands, as well as being the owner of a major area of land and property on the south side of the North Circular Road.
- 9.1.2 The Brent Cross shopping centre and adjacent lands are held on long lease by Hammerson plc and Standard Life plc in 40%/60% shares.
- 9.1.3 Hammerson is now the 100% shareholder in the development company called Cricklewood Regeneration Limited (CRL), having purchased the 50% interest previously owned by Brookfield Europe in July 2010. Brookfield Europe will now not take any part in the regeneration, and therefore only one guarantor company (that to be associated with Hammerson plc) will be provided. Previously, a second guarantor associated with Brookfield Europe was to be required.
- 9.1.4 Hammerson plc have proposed that their main UK operating company, Hammerson UK Properties plc, will guarantee the legal and financial commitments of CRL. Hammerson plc have provided the Council with detailed accounts which have been reviewed by the Director of Finance whose comments are included in the accompanying exempt report.
- 9.1.5 Hammerson also has an option to purchase Network Rail lands situated to the south of the North Circular Road and to the east of the operational rail lines.
- 9.1.6 Together, the Council, CRL and Hammerson/Standard Life represent the major landowners within the Cricklewood/Brent Cross regeneration area.
- 9.1.7 In 2006 the Council entered into a collaboration agreement with CRL and the Brent Cross partners (BXP) which recorded that the Council and the Developers had agreed to work together to secure the regeneration of the Brent Cross/ Cricklewood area in accordance with the planning framework and that the Council and the Developers had agreed to negotiate with each other to ensure that the optimum regeneration benefits reasonably achievable are secured and delivered as part of the regeneration scheme. The regeneration benefits being sought by the Council included –
- A new town centre;
 - New and/or improved/expanded schools;
 - New and enhanced open spaces and recreation/leisure facilities;
 - New housing; and
 - Improved transport facilities.
- 9.1.8 The scheme proposals put forward by the developers will meet the Council's objectives and a mechanism for achieving this has been agreed with the developers. This comprises –
- (i) an overarching Development Framework Agreement (DFA) which guides the achievement of
- a satisfactory planning permission;
 - the grant of highway (stopping-up/diversion) orders;
 - a confirmed compulsory purchase order; and
 - scheme viability.

If the requirements of the DFA are not satisfied (i.e. the DFA does not become unconditional) there is a long-stop date of six years or 14 January 2016 (such long-stop date to be extended if any appeal or similar process is in train or decisions are awaited) by which the Council can look to alternative ways of achieving its objectives.

(ii) and two Principal Development Agreements (PDAs) – one with the shopping centre owners Hammerson and Standard Life, and one with CRL.

9.1.9 Members should note that the detailed terms of these agreements, that were reported in October 2009 to Cabinet, have in general not altered and approval is not being sought again for the overall deal.

A number of the recommendations of that report have been resolved in this report:

(a) Approval by the Chief Finance Officer of the Hammerson guarantor company; and

(b) The appropriate land transaction and financial arrangements now do not need to be approved by the Secretary of State, as advice has been received that the transaction represents best consideration for the Council.

9.1.10 This report concerns itself only with the changes to the commercial terms and property transactions that have occurred since the report to Cabinet in October 2009.

9.1.11 The negotiations have developed over 12 months since October 2009:

- In relation to Brent Cross, the Council receives an increasing ground rent income in perpetuity. In exchange for an improvement in the deductions regime for CAPEX (capital expenditure), which should benefit the Council financially, the Minimum Ground Rent receivable by the Council will be capped at a maximum of 2% and the revised lease term will be extended to 250 years, rather than the 225 years previously reported; and
- In relation to the land disposal aspects, the overall combined transaction is now considered by the Council's advisors to represent 'best consideration' at this point in time, thereby not requiring the DFA and PDA to be considered by the Secretary of State at this stage

9.1.12 The report also highlights the progress made towards the scheme gaining a planning consent since October 2009 and the latest predictions of the delivery programme.

9.2 Council Objectives

9.2.1 For over 10 years the Council have aspired to having the surplus railway lands and adjacent lands within the Cricklewood area redeveloped to provide new housing, new businesses/employment opportunities and associated local improvements. The subsequent production of the Cricklewood and Brent Cross chapter of the Unitary Development Plan, prepared in consultation with major local stakeholders, such as Hammerson/Brent Cross and Railtrack (predecessor of Network Rail) produced proposals for the regeneration of a much larger area, now incorporating Brent Cross shopping centre and Council owned lands to the south of the North Circular Road. The Council's objectives for the regeneration (9.1.7 above) are reflected within the UDP.

9.2.2 In addition to the above the Council also wanted to achieve –

- improved financial returns from its ownership of the Brent Cross freehold; and
- make better use of its run-down property resources to the south of the North Circular Road through facilitating regeneration opportunities.

9.2.3 These objectives remain unchanged from October 2009.

9.3 Collaboration Agreement

9.3.1 The terms of this report follow the provisions of the Collaboration Agreement, which are referred to in more detail in the report to Cabinet on 21 October 2009.

9.3.2 This Agreement provides for non-disclosure of confidential items so the financial details included in the Consultants Reports and other financial details are included in the accompanying exempt report.

9.4 Planning

9.4.1 Since the report to Cabinet on 21 October 2009, the Council's Planning and Environment Committee have considered the developers' Outline Planning Application for the scheme at their meetings on 18 and 19 November 2009 and again on 29 July 2010 and 20 September 2010.

9.4.2 The scheme was referred to the Mayor of London who decided not to direct refusal and supported the application. The Secretary of State issued an Article 14 Directive to consider the scheme further. This was lifted in June 2010. The Planning and Environment Committee meeting in July agreed to a number of updated points including a slightly changed delivery programme, and to extend the period for granting the consent for 3 months, until 29 October 2010. The meeting on 19 September 2010 clarified some points raised at the July meeting. The S106 Agreement is due to be exchanged, and the planning consent issued, before the end of October 2010.

9.4.3 The entire planning process and the negotiation of the commercial terms have been kept entirely separate as a matter of law and governance, although as has been stated in previous reports, the delivery of the scheme will depend on both a valid planning consent and associated Section 106 Agreement, and the commercial arrangements outlined in this and previous reports being entered into. It is therefore in the Councils interests that the commercial terms are secured at or around the same time as the planning consent is issued.

9.5 The Development Partners

9.5.1 In the report to Cabinet on 21 October 2009, it was reported that Brookfield had taken over as a partner in the CRL partnership, along with Hammerson. Brookfield Europe LP had been put forward as a guarantor to CRL, along with a Hammerson company (not identified at that time).

9.5.2 Brookfield have now sold their entire shareholding in CRL to Hammerson, leaving Hammerson the 100% owner of CRL; Brookfield will take no further part in the project. Hammerson have now put forward their main UK operating company, Hammerson UK Properties plc, to be the guarantor for CRL.

9.5.3 The financial strength of Hammerson UK Properties plc has been assessed by the Chief Finance Officer [whose report is attached in the accompanying exempt report] and who has advised that this company should be accepted as sole guarantor to CRL.

9.5.4 The identity of the companies behind the Brent Cross part of the scheme remains unaltered, i.e. subsidiaries of Hammerson and Standard Life, both of whom are FTSE 100 Companies.

9.6 The Development Framework Agreement (DFA)

9.6.1 In the report to Cabinet on 21 October 2009, a timeline was set out, which suggested the development would commence in March 2015. Due to the 12 month delay in the Council being able to grant the planning permission, the more likely development commencement date could be as late as October 2017. However, the development partners have advised they are still hopeful they can achieve start no later than March 2015, subject to scheme viability.

9.6.2 The DFA also contains a longstop date so that the Agreement can come to an end allowing the Council to find alternative ways to achieving its objectives if necessary.

9.6.3 Since the last report, progress has also been made in defining the Historic Costs, which is referred to in the accompanying exempt report.

9.7 Brent Cross PDA and Head Lease

9.7.1 In the report to Cabinet on 21 October 2009 it stated that a lease extension to 225 years had been agreed. In subsequent negotiations, this has now been extended to 250 years in order to secure financial benefits to the Council from renegotiating the ground rent provisions. The Council's consultants have confirmed that the extended lease term does not materially diminish the value of the Council's land interest. This is referred to in the accompanying exempt report.

9.7.2 The major financial benefit to the Council comes from the renegotiation of the provisions of the ground rent, referred to in more detail in the exempt report, in the way the percentage ground rent is calculated to better represent a true 'side-by-side partnership' arrangement.

9.7.3 The previously agreed immediate uplift in the existing ground rent (operable whether or not the development proceeds) will still operate as from January 2010, so will be back-dated to that date.

9.7.4 The details of how the revised ground rent provisions work are considered to be commercially confidential and are therefore included in the accompanying exempt report

9.7.5 In order to lock-in the benefits of the revisions to the ground rent, the lease extension to 250 years will be progressed in advance of the rest of the documentation.

10. LIST OF BACKGROUND PAPERS

10.1 None.

Legal – MM
CFO – AT