

	ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER 26 April 2016
Title	Brent Cross Cricklewood – Gowling Wragge Lawrence Graham (UK) LLP
Report of	Commissioning Director, Growth and Development
Wards	Child's Hill, Golders Green and West Hendon
Status	Public
Enclosures	None
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Summary

In October 2014, the Council appointed Wragge Lawrence Graham & Co LLP to provide specialist legal support on the Brent Cross Cricklewood Scheme. This support also covers procurement advice to Council on the selection of its preferred development partner for Brent Cross Cricklewood South. Wragge Lawrence Graham & Co will continue to provide legal advice on this scheme.

This report seeks approval to:

- vary the value of the existing contract between the Council and Gowling WLG (formerly Wragge Lawrence Graham & Co LLP) who were procured following an OJEU-compliant procedure from £800,000.00 to the value of £1,627,508.46.

This variation will allow the Council to make payments on all outstanding costs until the end of May 2016. Furthermore, officers will be preparing a report for the next Policy and Resources Committee to seek approval on future spend against this contract.

Decisions

- 1. To approve an emergency waiver under Clause 15.2 to vary the value of the existing contract between the Council and Gowling Wragge Lawrence Graham (formerly Wragge Lawrence Graham & Co LLP) from £800,000.00 to the value of £1,627,508.46.**

1. WHY THIS REPORT IS NEEDED

- 1.1 The Brent Cross Cricklewood Scheme is one of the major regeneration schemes and is being driven by a partnership comprising Hammerson, Standard Life and the Council (Brent Cross North); and a Joint Venture between Argent Related and the Council (Brent Cross South). Owing to the fragmented land ownership, mixed uses and the nature of previous land uses, and the scheme being separated into 3 distinctive development areas (North, South and Thameslink Station), the Council requires specialist legal advice in a number of key areas such as commercial, planning, property, CPO, network rail, procurement and on joint venture contract matters.
- 1.2 In February 2015, following an open procedure OJEU procurement process Wragge Lawrence Graham & Co LLP (now Gowling WLG) was appointed to provide specialist legal advice and support on the Brent Cross South scheme. They are currently providing legal advice on the Joint Venture contract between the Council and Argent Related, and they are also providing support on Brent Cross Cricklewood North and on the Thameslink Project.
- 1.3 The original contract value was set at £800,000 and this limit has now been reached. In order for the Council to continue with receiving specialist advice from Gowling WLG on the scheme, a variation is required on the contract value. The continuation of consistent legal advice is required and this variation will increase the contract value to enable payments on the outstanding fees and for costs incurred until the end of May 2016.
- 1.4 This variation will allow the Council to make payments on the outstanding fees (reported in Section 5.2) and cover any fees up to end of May 2016. A report will be submitted to Policy and Resources Committee in June 2016, to authorise future spend against this contract.

2. REASONS FOR DECISIONS

- 2.1 The Council still requires specialist legal support on this scheme and Gowling WLG are best placed to provide this support particularly with regards to the areas mentioned in paragraph 1.2.
- 2.2 Gowling WLG was procured in accordance with the public procurement rules and the contract is based on hourly/day rates and not on a lump sum fee. There is no time or value limit to this contract and it has been confirmed with HB Public Law that the Council does not need to undertake a re-tender process.

- 2.3 There is a risk that if the Council does not increase the limit of the contract value, the non-payment of fees may result in withdrawal of this service which will impact on its ability to continue to use Gowling WLG's services.
- 2.4 As highlighted in 2.2, the contract price is based on hourly/day rates and this is billed according to usage. Clause 2.2 of the contract with Gowling WLG also provides for Change (Variation of Contract Services) as long as the legal advice relates to the Brent Cross Cricklewood Scheme.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3.1 There are no suitable alternative options. Gowling WLG were the most economically advantageous tender and they were appointed to the scheme on this basis.
- 3.2 Gowling WLG are operating within the existing terms and conditions and if the value is not varied, the Council will be unable to pay the outstanding fees and any future costs.

4. POST DECISION IMPLEMENTATION

- 4.1 Once the decision has been approved the appropriate officers will go through the necessary internal processes to increase the contract value.
- 4.2 The limit will be reviewed at the end of this financial year (31st March 2017) to determine if the limit will require a further variation.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The regeneration of Brent Cross Cricklewood supports the Council's Corporate Plan 2015-20 which states that the council will work with local, regional and national partners to strive to ensure that Barnet is a place:

- of opportunity, where people can further their quality of life
- where people are helped to help themselves, recognising that prevention is better than cure
- where responsibility is shared, fairly
- where services are delivered efficiently to get value for money for the taxpayer

- 5.1.2 The Growth Strategy for Barnet recognised that regeneration and growth are vital for ensuring the future prosperity of the Borough and maintaining Barnet as a successful London suburb. The scheme to transform Brent Cross Cricklewood will play a major role in delivering this prosperity, doubling the size of the shopping centre and linking seamlessly to a new town centre for Barnet and North London across the North Circular Road. Brent Cross

Cricklewood is one of Barnet's priority regeneration areas, and will provide approximately 7,500 new homes over the next 20 years. It is a key part of the wider revitalisation of the A5 corridor, linking Brent Cross Cricklewood with developments at West Hendon, Colindale and Edgware and improvements to Cricklewood Town Centre, to create a series of high quality modern suburbs.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

Finance

- 5.2.1 From the period from October 2014 to date, the expenditure for Gowling WLG is £775,335.22 (excluding VAT and outstanding costs) and the original estimated contract value was £800,000.00. This report seeks authority to increase the budget to cover the costs incurred from December 2015 to May 2016. This would cover any outstanding costs which cannot be covered by the existing value limit as it stands (currently totalling £612,173.24) as well as any future costs.
- 5.2.2 Under the terms of the Principal Development Agreement (PDA) signed by the Council and the Development Partners (Hammerson/Cricklewood Regeneration Limited and Standard Life) are obliged to pay the Council's costs on Brent Cross Cricklewood North. At present, the Council recovers its costs on Brent Cross Cricklewood on a quarterly basis.
- 5.2.3 With regards to Brent Cross Cricklewood South, the Council has entered into a Joint Venture with Argent Related, its preferred development partner to take forward this scheme. Within this arrangement, there is provision for the Council to recover its costs from Argent Related and it can start to recover its costs from April 2016.
- 5.2.4 These costs are contained within the scheme budget, and it will be monitored by Re and reported to the council on a regular basis.
- 5.2.5 Any legal fees relating to the Thameslink project will be covered by the budget of £4.9 million which was approved by the Assets Regeneration Growth Committee on 30 November 2015.
- 5.2.6 The original budget of £800,000.00 has been exceeded for a number of reasons. The main reason for this increase is due to the complicated nature of the negotiations on the Joint Venture structure and on the contractual matters associated with this approach.
- 5.2.7 In November 2015, the Assets Regeneration and Growth Committee approved the Brent Cross South Joint Venture Structure. This was followed by a further Committee approval in March 2016 on the detailed terms of the Project Agreement, Limited Partnership Agreement, Shareholder Agreement and other associated documentation on the Joint Venture. In March 2016, Committee also approved the finalisation and completion of these documents

and authorised the Council entering into contract with the Joint Venture.

5.2.8 The Council entered into a Joint Venture Company (JV Co) with Argent Related from April 2016. As a result, Gowling WLG have been providing advice on the Joint Venture structure and they have also produced all the legal documentation for the creation of the JV Co.

5.2.9 The contract with Gowling WLG was signed and the budget was assigned prior to Argent Related appointment and before the Council entered into the JV Co. Whilst this situation did not alter the terms of Gowling WLG's contract, it had a significant impact on the budget.

5.2.10 The total expenditure for Gowling WLG in the financial year 2015-16 (including outstanding costs) was £1,190,587.46. This has resulted in an overspend of £390,587.46. The majority of this overspend comes from the two final invoices of that year (as shown in the table in paragraph 5.2.13).

5.2.11 In the contract with Gowling WLG (Appendix 2 under clause 1) a price review is due to take place on an annual basis, at the end of April each year. Going forward this will begin in January 2017 with a report to the Assets Regeneration and Growth Committee to update on the review.

5.2.12 This report seeks authority to increase the total budget to £1,627,508.46 which will cover all outstanding costs to the end of May 2016, after which the Policy and Resources committee will make a decision on a further variation to the contract to cover all costs until April 2018.

5.2.13 Below is a table outlining the current and future outstanding costs up until May 2016:

Month and Year	Amount (VAT exc)
December 2015	£45,712.56
February 2016	£150,844.40
March 2016	£218,695.28
April 2016	£196,921.00
*May 2016	£240,000.00

5.2.14 It is important to note that the figure for *May is an estimate based upon previous invoice amounts.

Procurement

5.2.15 Gowling WLG were procured on the basis that they would provide all legal advice (excluding advice on CPO) on the Brent Cross Cricklewood Regeneration and therefore, the increase in fees is permissible under the original terms of their contract.

5.3 Legal and Constitutional References

- 5.3.1 The procurement exercise for the appointment was carried out in accordance with the Council's Contract Procedure Rules (CPR) and public procurement regulations.
- 5.3.2 The CPR Appendix 1 Table A requires acceptance using a full officer DPR and if within budget variation report to the relevant thematic committee
- 5.3.3 The existing terms and conditions of contract will apply to future advice and the only requirement is to agree an updated specification of the services to be provided by GWLG.
- 5.3.4 The Council's Constitution (Contract Procedure Rules, Section 15 under 5.2 states that Directors, Assistant Directors, Commissioning Directors and Heads of Service may take decisions on emergency matters (i.e. an unexpected occurrence requiring immediate action) in consultation with the Chairman of Policy and Resources Committee providing they report to the next available Policy and Resources Committee, setting out the reasons for the emergency waiver. A copy of the relevant Policy and Resources Committee report must be provided to CSG Procurement and stored on the Council's contract repository.

5.4 Risk Management

- 5.4.1 As the original appointment was in full compliance with the public procurement rules and the CPR there is not a risk involved in extending the contract value due to the service nature of the procurement.

5.5 Equalities and Diversity

- 5.5.1 It is not envisaged that this appointment will result in a detrimental effect on any resident(s) with 'protected characteristics', over and above the effect on those without 'protected characteristics', due to the universal nature of the service being provided. The council understands that it has an obligation to meet its public sector equalities duty under the Equality Act 2010 including where public functions are delivered on its behalf by other organisations and will do everything necessary to ensure that there is continuing compliance with this duty.

5.6 Consultation and Engagement

This contract extension does not require consultation and engagement.

6. BACKGROUND PAPERS

- 6.1 Cabinet, 29 March 2005 (Decision Item 6) – agreed to enter into a Collaboration Agreement with the development partnership (Cricklewood Regeneration Limited, Hammerson and Standard Life).

<http://barnet.moderngov.co.uk/CeListDocuments.aspx?Committeeld=120&MeetingId=265&DF=29%2f03%2f2005&Ver=2>

- 6.2 Cabinet Resources Committee, 25 March 2008 (Decision Item 16) – approved the outline terms so far agreed with the Brent Cross North 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 and the Property Development Agreements be reported to a future meeting of the Cabinet for approval.

<http://barnet.moderngov.co.uk/Data/Cabinet%20Resources%20Committee/200803251900/Agenda/Document%2015.pdf>

- 6.3 Cabinet Resources Committee, 19 October 2010 (Decision Item 5) – approved the changes to the terms and conditions of the Development Framework Agreement and the two Property Development Agreements regarding Brent Cross Cricklewood (as considered and approved by Cabinet in October 2009)

<http://barnet.moderngov.co.uk/CeListDocuments.aspx?Committeeld=151&MeetingId=446&DF=19%2f10%2f2010&Ver=2>

- 6.4 Cabinet Resources Committee, 18 April 2013 (Decision Item 14) - noted that the Brent Cross Cricklewood Development Partners wished to modify the existing planning consent to allow re-phasing; approved that the Director for Place begin preparations to enable the Council to procure a development partner to deliver the regeneration of the southern parts of Brent Cross Cricklewood Regeneration Area and confirmed the continued appointment of the external advisors for the Brent Cross Cricklewood Regeneration project, and the procurement of appropriate additional advice, and to delegate authority to the Director for Place to deal with necessary contractual issues or arrangements.

<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=151&MId=6759&Ver=4>

- 6.5 Cabinet Resources Committee, 18 April 2013 (Decision Item 14) - noted that the Brent Cross Cricklewood Development Partners wished to modify the existing planning consent to allow re-phasing; approved that the Director for Place begin preparations to enable the Council to procure a development partner to deliver the regeneration of the southern parts of Brent Cross

Cricklewood Regeneration Area and confirmed the continued appointment of the external advisors for the Brent Cross Cricklewood Regeneration project, and the procurement of appropriate additional advice, and to delegate authority to the Director for Place to deal with necessary contractual issues or arrangements.

<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=151&MId=6759&Ver=4>

- 6.6 Assets, Regeneration and Growth Committee dated 9 July 2014 approved the procurement of a partner for the Brent Cross Cricklewood South development through an OJEU Negotiated route in accordance with the Brent Cross South Procurement and Delivery Strategy, and approved the Council's requirements for the Brent Cross Cricklewood South opportunity; and noted procurement timetable and that to meet this timetable an additional meeting would be needed to approve the selection of a preferred partner, which would be called in accordance with statutory requirements and the Council's constitution.

<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=7960&Ver=4>

- 6.7 Assets, Regeneration and Growth Committee dated 15 December 2014 noted progress on the Brent Cross Cricklewood project.

<http://barnet.moderngov.co.uk/documents/s19845/BXC%20update%20-%20Publish.pdf>

- 6.8 Delegated Powers Report (11 February 2015) re-confirm approval of Wragge Lawrence Graham & Co legal appointment to the Brent Cross Cricklewood Scheme.

- 6.9 Full Council dated 3 March 2015 approved the appointment of Argent and Related Companies PLC (Bidder Z) as the Council's preferred development partner for the Brent Cross Cricklewood South Scheme; the selection of Gateway Barnet consortium comprising Far East Consortium, Countryside Properties and Notting Hill Housing Trust (Bidder Y) as the Council's reserve development partner for the Brent Cross Cricklewood South Scheme; authorise Officers to work up the Business Plan, Project Agreement and documentation necessary to form the joint venture for consideration and approval by Assets, Regeneration and Growth Committee prior to formally entering into the joint venture contract and authorised the Commissioning Director (Growth and Development) to determine the exact structure of the joint venture arrangement.

<http://barnet.moderngov.co.uk/documents/g7819/Public%20reports%20pack%2003rd-Mar-2015%2019.30%20Council.pdf?T=10>

- 6.10 Assets, Regeneration and Growth Committee dated 30 November 2015 approved the terms for the amendments to the Brent Cross Property Development Agreement and Co-operation Agreement and authorised the Chief Executive in consultation with the Leader of the Council to agree the detail of the Brent Cross Property Development Agreement and Co-operation Agreement and any required subsequent changes in the associated commercial documentation; noted progress on land acquisitions within the CPO red line boundary and that the CPO Inquiry for Brent Cross Cricklewood CPO1 and Brent Cross Cricklewood CPO 2 is scheduled for 17 May - 17 June 2016; approved the Brent Cross South Joint Venture Structure that will inform the Project Agreement and documentation necessary to form the Brent Joint Venture; noted the establishment of the Shadow Joint Venture Board and gave approval for the terms of reference for Shadow Shareholder Board for the Brent Cross South Joint Venture to be drawn up including a process for appointing Members for agreement at the next practicable meeting of the Council; and noted progress on the Thameslink Station project, in particular the station design and funding strategy.

<http://barnet.moderngov.co.uk/documents/s27725/Brent%20Cross%20Cricklewood%20Project%20update.pdf>

- 6.11 Council 1 March 2-16 noted the report of Assets, Regeneration and Growth Committee on 30 November 2015 as attached at Appendix 1 which approved the Joint Venture Structure and authorised the establishment of a Shadow Shareholder Board for the Brent Cross South Joint Venture, and that its terms of reference and membership to be drawn up for Council approval; noted the Brent Cross South Joint Venture Structure at Appendix 3 attached to the report of the Assets, Regeneration and Growth Committee on 30 November 2015; approved by the Committee on 30 November 2015; agreed the terms of reference for the Shadow Shareholder Board for the Brent South Joint Venture as outlined in paragraph 2.15; agreed that the composition and Membership of the Shadow Shareholder Board be agreed, as per paragraphs 2.13 and 2.14 of the report; noted the decisions outlined in Appendix 2 which will be required by the Shadow Shareholder Board as detailed in the Project Agreement and Shareholder and associated documentation necessary to form the Brent Cross South Joint Venture; and noted that the Project Agreement, Shareholder Agreement and associated documentation will be reported to Assets, Regeneration and Growth Committee on 17 March 2016 for approval and that that report will recommend that the Chief Executive be authorised in consultation with the Leader to finalise the documentation.

<http://barnet.moderngov.co.uk/documents/s29974/Report%20to%20Council%20Report%20-%20Report%20of%20Assets%20Regeneration%20and%20Growth%20Committee%20-%20Brent%20Cross%20Cricklew.pdf>

7. DECISION TAKER'S STATEMENT

- 7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations.*

8. OFFICER'S DECISION

I authorise the following action

1. To approve an emergency waiver under Clause 15.2 to vary the value of the existing contract between the Council and Gowling Wragge Lawrence Graham (formerly Wragge Lawrence Graham & Co) from £800,000.00 to the value of £1,627,508.46.

Signed



Cath Shaw
Commissioning Director, Growth & Development

Date

29/4/16
