



Policy and Resources Committee

3 October 2019

Title	Brent Cross Cricklewood Report
Report of	Chairman of the Policy and Resources Committee
Wards	Childs Hill, Golders Green and West Hendon
Status	Public
Urgent	No
Key	No
Enclosures	Appendix 1 – Standard Questionnaire Appendix 2 – Invitation to Tender Appendix 3 – Evaluation Criteria Appendix 4 – Invitation to submit final tender
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Summary

This report provides an update on the OJEU procurement evaluation process to select the contractor to design, build and commission the Brent Cross West Station as well as seeking authority to revise the procurement strategy for the Waste Transfer Station, if necessary.

Officers Recommendations

That the Committee:

- 1) Note the progress update provided to the Assets, Regeneration and Growth Committee (ARG) on 16 September 2019
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?MId=9929&x=1>
- 2) Note progress on the OJEU procurement evaluation process to select the contractor to design, build and commission the Brent Cross West Station.
- 3) Note that council officers are negotiating the required Asset Protection Agreement with Network Rail in respect of the station; and delegate to the Deputy Chief Executive to finalise and authorise entering into that agreement in consultation with the Chair of the Assets, Regeneration and Growth Committee, subject to the station contract being awarded.
- 4) Note progress on Homes England (HE) Home Building Fund Loan Facility and that CBRE are instructed to advise on the future council's land contribution and best consideration in accordance with the Brent Cross South Project Agreement. CBRE are also instructed to undertake a review to inform the required consequential revisions to the legal agreements in light of the HE funding and the Direct Agreement.
- 5) Authorise and delegate to the Chief Executive authority to revise the waste procurement strategy as reported to the Committee on 11 December 2018 in consultation with the Chair of the Assets, Regeneration and Growth Committee, if required.

1. WHY THIS REPORT IS NEEDED

- 1.1 The Committee is asked to note the progress update provided to the Assets, Regeneration and Growth Committee (ARG) 16 September 2019.
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?MId=9929&x=1>
- 1.2 This report updates the Committee on Brent Cross South (BXS) and also provides an update on the OJEU compliant procurement process to select the contractor to design, construct and handback the Brent Cross West station. The evaluation process is underway and it is anticipated that a further update will be provided to the Committee ahead of the meeting.

Brent Cross South

- 1.3 As explained in the report to ARG on 16 September 2019, the council and Argent Related have commenced site assembly and early infrastructure works. Utility disconnections are underway and parts of the site are now hoarded up. The demolition of the Rosa Freedman Centre has commenced.
- 1.4 Homes England (HE) have in principle approved to provide a Home Building Fund Loan Facility to BXS JVLP to fund physical and social infrastructure to accelerate development.

Heads of Terms are agreed and a Loan Facility Agreement (LFA) is being drafted for completion in October 2019 subject to MHCLG and HM Treasury approval.

- 1.5 The council is in direct discussions with HE regarding the Direct Agreement within the parameters approved by the Assets, Regeneration and Growth Committee on 13 June 2019. <http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=9928&Ver=4>
- 1.6 This agreement will be completed in parallel with the LFA. The Direct Agreement will provide the framework by which HE and the council can agree to bring about the successful delivery of the project in the event of a substantial default by BXS JVLP of the LFA. HE has requested that the Council separately grants a legal charge over its land assets, or makes an arrangement that provides equivalent security, albeit that the Direct Agreement is intended to take priority over it. Whether the council has the vires to agree depends on the precise nature of the security and where the ultimate responsibility for repayment of the loan rests. This is the subject of ongoing discussions with Argent Related and Homes England, and requires HE to be satisfied as the risk sits principally with them. The Assets, Regeneration and Growth Committee delegated authority to the Chief Executive in consultation with the Chairman of the Committee to finalise the terms and enter into the Direct Agreement on 13 June 2019. All parties are working to having all approvals and legal documentation in place by the end of October. This is likely to include consequential amendments to the Project Agreement and BXS JVLP partnership documents.
- 1.7 As also explained to ARG, it is now appropriate to review and update the BXS Business Plan approved in July 2017 to take account of the revised delivery strategy and consequential changes directly resulting from the deferral by BXN, the BXS and BXT scheme development and revised critical and strategic infrastructure delivery alongside the proposed HE finance and current market conditions. These changes are anticipated to be considered by ARG on 26 November 2019. BXS are also preparing a revised Phase Proposal in line with the emerging Business Plan. The council has instructed its strategic property advisor CBRE to review the BXS financial model and advise on the future council's land contribution and best consideration in accordance with the Project Agreement. CBRE are also instructed to undertake a review to inform the required consequential revisions to the legal agreements in light of the HE funding and the Direct Agreement.

Brent Cross Thameslink

- 1.8 The BXT project has now fully entered the construction and delivery phase. The Train Operating Company (TOC) Compound building has been installed and the team are well underway fitting out and finishing the unit for occupation by Govia Thameslink Railway (GTR) in early October. In relation to the Rail Systems and Sidings Works being delivered by Network rail (NR) under the Implementation Agreement are continuing to progress. The programme remains on target to commission the south sidings in January 2020. This is a key milestone in delivering the new station for May 2022.
- 1.9 The Committee will recall that the Policy and Resources Committee approved the OJEU procurement for the station platforms and station access / pedestrian bridge elements of the Thameslink programme on 11 December 2018 to encourage increased market competition and scope for achieving best value for money. The station is made up of two small pre-fabricated steel buildings (ticket hall and station entrance) covered in cladding which will be joined by a footbridge.

- 1.10 The report to the Committee on 11 December 2018 explained that given that there is time in the programme, it is appropriate and prudent to review the procurement strategy and tender the works to ensure value for money and that all delivery risks are fully assessed. The council's delivery team considered that commencing such a competitive tender process offered the best opportunity to test whether procuring a more experienced contractor, who has proved their desire to deliver the design and build of the station through the tender process, will provide more programme certainty and, by being responsible for both the design and build, will be more able to reduce construction timescales through buildability input and innovation.
- 1.11 In addition to ensuring value for money and greater cost certainty, it was considered that direct engagement with the market to deliver the Station Platforms and Station / Pedestrian Access Bridge should elicit innovative ideas to build the station more quickly with a modular mentality. This was envisaged to be probably the biggest positive factor in direct engagement.
- 1.12 This strategy also allowed Network Rail to focus on the main Sidings and Rail Systems works.
- 1.13 A Prior Information Notice (PIN) was issued to the market on 26 October 2018 and a supplier day held on 13 November 2018 to assess market interest to undertake the works. This event did generate significant market interest, and 38 contractors attended the event..
- 1.14 This Committee subsequently approved, subject to referral to Full Council, that the council commence an OJEU procurement for the station platforms and station access / pedestrian bridge elements of the programme and that the contract award decision will be reported to the Assets, Regeneration and Growth Committee for approval based on the following timetable:
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|---|----------------|
| • Commence OJEU procurement | January 2019 |
| • Shortlist confirmed and issue detailed tender | April 2019 |
| • Contract Award | August 2019 |
| • Commence detailed design and construction | September 2019 |
| • Station Commissioning | February 2022 |
| • Station into use | May 2022 |
- 1.15 Full Council approved the procurement strategy on 18 December 2018.
- 1.16 The OJEU notice accompanied by the Memorandum of Information and Standard Questionnaire (SQ) was then published on 1 February 2019. The SQ is attached at appendix 1.
- 1.17 Responses were received to the SQ on 4 March 2019, from nine suppliers, namely: Amey Rail; Buckingham Group Contracting Ltd; Costain Group plc; Hochtief Construction Ltd; John Graham Construction Ltd; Spencer Group; Vinci Construction (Taylor Woodrow) UK; Volker Fitzpatrick; and Van Elle.

- 1.18 The SQs were then evaluated in accordance with the evaluation criteria published in the OJEU notice: Pass/Fail questions on areas including Comparable delivery experience, HSQE, Regulatory Compliance and Economic & Financial stability. Scored questions on Technical Capability including GRIP 5-8 experience (25%), Design (15%), CDM (6%), Possession planning (8%), Delivery in an operational environment (6%), Third party collaboration (5%), CSM (5%), NEC3 experience (5%), Supply of steel (5%) and HSQE Management (20%). This was scored by a pre-selected and approved evaluation panel. The results were moderated, resulting in three suppliers being taken through to the Invitation to Tender (ITT) Stage.
- 1.19 The bidders selected to the ITT stage comprised Buckingham Group Contracting Ltd; Vinci Construction (Taylor Woodrow) UK; and Volker Fitzpatrick.
- 1.20 The Invitation to Tender attached at appendix 2 comprised a formal three stage OJEU (Competitive Procedure with Negotiation) procurement process as follows:
- Initial submission (issued 4 April 2019)
 - Negotiations (July – August 2019)
 - Final ISFT submission & single supplier selection (August-September 2019)
- 1.21 Initial responses to the ITT were received on the 7 June 2019 from all three suppliers. In accordance with the selected Competitive Procedure with Negotiation procurement route, each supplier submission was reviewed in detail and feedback provided. Suppliers were then invited to a series of negotiation sessions that took place between 4 and 23 July where clarifications and areas for improvement were discussed with each supplier individually.
- 1.22 Final submissions were received from the bidders on 23 August 2019 in accordance with the appendix 4. The evaluation is now underway in accordance with the evaluation criteria published in the ITT and summarised at appendix 3. Individual evaluation is being undertaken for each question followed by moderation sessions for each question to agree final scoring and it is anticipated that a further update will be provided to the Committee ahead of the meeting.

Waste Transfer Station

- 1.23 In relation to the Waste Transfer Station, the former Selco building has been demolished and the site subject to significant remediation. However, the sub structure early works have been delayed due to unforeseen ground conditions uncovered under the building following demolition. A revised programme and cost estimate has now been received from John Graham Construction Limited and is currently being reviewed by the BXT team with workshops scheduled to refine the construction delivery and price in line with the programme requirements. If this cannot be achieved, it may be necessary to consider alternative delivery options and revise the procurement strategy accordingly. Consequently, the committee is asked to delegate to the Chief Executive authority to revise the waste procurement strategy as reported to the Committee on 11 December 2018 in consultation with the Chair of the Assets, Regeneration and Growth Committee if required.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The comprehensive regeneration of Brent Cross Cricklewood is a long-standing objective of the Council and a key regeneration priority of the Mayor of London. The details of the scheme are set out in previous update reports to this Committee.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Procurement in compliance with public procurement legislation is necessary where a public body is seeking to procure goods and services above a specified threshold and this process needs to be undertaken in a fair and open manner. As Awarding Authority, the council is required to ensure the selected contractor is the most economically advantageous of those involved in the process and can provide value for money in the delivery of the social, economic and environmental regeneration outcomes and outputs.
- 3.2 The preferred contractor for delivery of Brent Cross West station is being selected by using the Competitive Procedure with Negotiation route, which was advised as the most appropriate approach for the procurement as set out in the report to this Committee on 11 December 2018.
- 3.3 The Committee could have chosen a route which sees Network Rail deliver the station platforms and bridge. However, for the reasons set out in paragraphs 1.41-1.50 of the report to this Committee on 11 December 2018 and Full Council on 18 December 2018, this is not recommended.
- 3.4 The council could decide not to approve the recommendation once the evaluation is complete, which would jeopardise the delivery and comprehensive development of the Brent Cross Cricklewood regeneration proposals thereby not achieving the corporate objectives set out in Section 5 of this report.

3.5

4. POST DECISION IMPLEMENTATION

- 4.1 Once the council has selected a contractor, the council will issue the Award Notification Letters informing bidders of the outcome and the reasons behind the outcome. Following issue of these letters, the council must observe a mandatory ten-day standstill period before a contract can be entered into with the preferred bidder. This is to provide the unsuccessful bidders with the chance to seek an effective remedy if it contested that the council did not comply with the procurement regulations.

5. IMPLICATIONS OF DECISION

- 5.1 **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

Budget Monitoring

- 5.1.1 The council has put in place procedures to ensure the effective monitoring of the financial performance of the BXC Programme. The budgets are as follows

Land Assembly

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

Budget Monitoring

- 5.2.1 The council has put in place procedures to ensure the effective monitoring of the financial performance of the BXC Programme. The BXC Governance Board comprising senior officers of the council, including the Chief Executive and the Director of Finance, receives a detailed report each month setting out the financial performance of the BXC Programme. This report includes a breakdown of the performance against the approved budgets and details of the individual Officers responsible for managing the budgets included within the BXC Programme.

Land Assembly

- 5.2.2 The approved budget for land acquisition to facilitate the BXC programme is £63.13m, in addition to expenditure on advanced acquisitions of £4.0m. Spend to end of March 2019 was £51m. The spend profile is currently being updated to reflect the revised delivery programme.

Thameslink Station

- 5.2.3 The current approved budget in the capital programme is £364.5m following confirmation of the HMG grant funding agreement. The GLA previously provided a grant of £2.9m to support the BXC Programme.
- 5.2.4 Actual spend to date is £72.7m. The total contractual commitments at the end of May 2019 is £248.3m. The Council has submitted drawdown requests totalling £152.9m, of which all has been paid to date.

Critical Infrastructure

- 5.2.5 These works are funded from the £55m core critical infrastructure budget that is being provided as part of the MHCLG revised funding agreement for Brent Cross Cricklewood. Actual expenditure to date is £17.5k.

Social Value

- 5.2.6 As set out in the Assets, Regeneration and Growth Committee (ARG) 16 September 2019 <http://barnet.moderngov.co.uk/ieListDocuments.aspx?MId=9929&x=1>

5.3 Legal and Constitutional References

- 5.3.1 Article 7 of the Council's Constitution – Responsibility for Functions- sets out the terms of reference of the Policy and Resources Committee which include:
- Responsibility for strategic policy finance including recommending: Capital and Revenue Budget; Medium Term Financial Strategy and Corporate Plan to Full Council as well as Finance including: treasury management, local taxation, corporate procurement, grants and writing off debt, virements and effective use of resources.

- 5.3.2 The Council's Constitution, Article 7.5 responsibility for function, states the functions of the Assets, Regeneration and Growth Committee, includes responsibility for regeneration schemes and asset management.
- 5.3.3 Council, Constitution, Article 10 Table A states that the Assets Regeneration and Growth Committee is responsible for authorising (1) all disposal and acquisition of land for over £500k and (2) any transaction which is a "less than best" transaction (interpreted as the term is set out at s 123(2) of the Local Government Act 1972).
- 5.3.4 The Council has a range of powers to enter into the legal agreements envisaged by this report, including the general power of competence under Section 1 of Chapter 1 of the Localism Act 2011 to do anything that individuals can do subject to any specific restrictions contained in legislation as well as pursuant to Section 111 of the Local Government Act 1972 which provides that a local authority has power to do anything which is calculated to facilitate, or is conducive or is incidental to, the discharge of its functions.
- 5.3.5 Additionally, the Council has the power to acquire and dispose of land in accordance with Sections 120 to 123(2A) of the Local Government Act 1972 and for planning purposes under sections 226-234 Town and Country Planning Act 1990, subject to obtaining all appropriate consents and approvals.
- 5.3.6 Procurement of public works and services contracts over the relevant value thresholds must observe the requirements of the Public Contracts Regulations 2015, to include the placing of OJEU notices where such contracts are not drawn down from a compliant framework. The Public Services (Social Value) Act 2012 requires the Council to consider whether it can achieve an improvement to the economic, social and environmental well-being of an area as part of the procurement of these services. If so, the social value objectives identified must be written into the procurement process. All of this must be achieved with regard to value for money and in a way that is compliant with existing public procurement law. "Social value" objectives can include the creation of employment, apprenticeship and training opportunities for local people, trading opportunities for local businesses and the third sector; and the promotion of equality and diversity through contract delivery.
- 5.3.7 The Council is aware of the need for any funding which is supplied (by way of the SIC for example) to be made on terms which comply with state aid law (article 107 Treaty of the Functioning of the European Union) and as such any monies will be advanced on terms which reflect the approach of a private sector investor.
- 5.3.8 The Council's solicitors appointed on this scheme (GWLG) have advised that if Homes England's security is to be by way of a legal charge, then the power to grant this is not prevented by section 13 Local Government Act 2003 where the monies are borrowed by BXS JVLP (and not by the Council) and where it is the ultimate responsibility of a third party to make the repayments (i.e. the Council is suitably indemnified for its exposure)). This is the subject of current discussions with Argent Related. The Council will rely on section 1 of the Localism Act 2011 to enter into the Direct Agreement, grant the legal charge and (if necessary) enter into the loan agreement with Homes England. There is no need for the Council to form a company under section 4 Localism Act 2011 where its purpose for entering into the arrangements with Homes England is to achieve the comprehensive regeneration of 'Mega Phase A' (and thereafter the wider scheme) as opposed to being a commercial

one. It may nevertheless choose to form a company or to transfer the relevant property interests into an existing company or into BXS JVLP for reasons of structuring the transaction. Any transfer of assets must nevertheless satisfy the statutory duty to secure best consideration and to obtain any relevant statutory consents.

5.4 Risk Management

5.4.1 Risk management has been applied across all levels of the programme. As reported to Committee in September, owners and mitigation plans are identified and risks are measured against impact and likelihood to give an overall rating. High rating risks are escalated and reported through the defined reporting procedure with top risks reported to BXC Governance Board. Currently the key risks and mitigations set out in the Assets, Regeneration and Growth Committee (ARG) 16 September 2019

<http://barnet.moderngov.co.uk/ieListDocuments.aspx?MId=9929&x=1>

5.4.2 This section focuses on the station and waste delivery:

5.4.3 As a result of not contracting with NR and selecting a third-party contractor, an Asset Protection Agreement (APA) with NR is required for the design and construction phase, together with the associated timescales for document review. However, contrary to the original strategy, NR confirmed in November 2018 to the council that it wishes to focus on the Sidings and Rail Systems and therefore are content for the council to go to the market for these works and contract outside of NR. Helpfully, NR committed to supporting a collaborative APA process and the team within NR Engineering resources undertaking the assurance role for the Sidings and Rail systems design and build are very likely to also undertake the assurance role for the station design and build. The APA is now being finalised and will be agreed prior to contract award. These factors mitigate the risk to the programme regarding handback of the station.

5.1 Employing a contractor through NR would have provided some level of insulation against any incidents that may occur on site. This is being mitigated by appointing an experienced contractor who is used to working on NR infrastructure and has an approved NR principal contractor licence. By undertaking this OJEU procurement process, the council can select a contractor who has completed works before, minimising the risk.

5.4.4 Station Delivery Date – there is the risk that the May 2022 station opening date cannot be achieved. This would result in additional costs due to programme prolongation as the earliest viable opening date would be December 2022 due to restrictions on timetable changes. This could be later depending on other works on the railway. To mitigate this risk there are project and programme review boards in place that regularly monitor and challenge deliverables at all levels. Specific project risks are identified and managed at the work package level with clear owners and mitigation plans for each. Any risk that results in an impact on a key milestone is reviewed by the programme team and BXC governance board taking into consideration time and cost implications alongside impacts on BXS given the interdependencies and criticality of delivery of the station on the BXS programme.

5.4.5 Achieving the required railway possessions. This will be critical to maintaining programme and keeping within the cost envelope. It is critical to book possessions in advance including multiple reserve possessions. To mitigate this risk it is essential for the BXT team to keep in regular contact with NR railway possessions planner and escalate as required.

5.4.6 Thameslink station delivery costs – as with all major programmes there is the risk that costs will increase during programme delivery. This will be mitigated through the contract. An update will be provided as part of the recommendation for contract award. The Committee will also recall that the most important control mechanism for the council is to employ experienced staff who will provide diligent review and challenge of the NR cost base and reject any costs which are not reasonably and properly incurred. The council's Client and Re Thameslink delivery team comprises professionals used to working on the railway within Network Rail and are experienced in delivering large railway projects

5.4.7 Homes Building Fund - It is market norm for infrastructure loans to be secured against land, the difference here being that the land is owned by the council having not yet been acquired by the borrower, BXS JVLP. However, this approach increases the risk to the council's delivery control and its investment in BXC should BXS JVLP default on the loan facility. In order to mitigate this risk, Senior Officers are working with Homes England to put in place a framework that, in the event of default, enables both parties to work together to agree a revised delivery strategy that will continue to achieve housing delivery as well as recovering investment to date. This framework will be documented through a contractual Direct Agreement between the council and Homes England.

5.5 Equalities and Diversity

5.5.1 As set out in the Assets, Regeneration and Growth Committee (ARG) 16 September 2019

5.6 Corporate Parenting

5.6.1 None in the context of this report.

5.7 Consultation and Engagement

5.7.1 As set out in the Assets, Regeneration and Growth Committee (ARG) 16 September 2019

6 BACKGROUND PAPERS

6.1 Assets, Regeneration and Growth Committee, 27th November 2018, Brent Cross Cricklewood Update Report

<http://committeepapers.barnet.gov.uk/documents/s49849/Brent%20Cross%20Cricklewood%20Update%20Report.pdf>

6.2 Policy and Resources Committee 11 December 2018 Brent Cross Funding

<https://barnet.moderngov.co.uk/documents/g9460/Public%20reports%20pack%2011th-Dec-2018%2019.00%20Policy%20and%20Resources%20Committee.pdf?T=10>

6.3 Full Council 18 December 2018 Brent Cross Cricklewood Update Report

<https://barnet.moderngov.co.uk/documents/g9454/Public%20reports%20pack%2018th-Dec-2018%2019.00%20Council.pdf?T=10>

6.4 Policy and Resources Committee 20 February 2019 Brent Cross Funding

<http://barnet.moderngov.co.uk/documents/s51244/Brent%20Cross%20Cricklewood%20Funding%20and%20Delivery%20Strategy%20Report.pdf>

- 6.5 Chief Officer Decision, Brent Cross Cricklewood Funding and Delivery Strategy, 6 March 2019
<http://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=7163>
- 6.6 Assets, Regeneration and Growth Committee, 25 March 2019, Brent Cross Cricklewood Update Report
<http://barnet.moderngov.co.uk/documents/s51730/Brent%20Cross%20Cricklewood%20Update%20Report.pdf>
- 6.7 Assets, Regeneration and Growth Committee, 13 June 2019, Brent Cross Cricklewood Update Report
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=9928&Ver=4>
- 6.8 Assets, Regeneration and Growth Committee, 16 September 2019
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?MId=9929&x=1>