

	<p>ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER 22 July 2014</p>
Title	Brent Cross Cricklewood Commercial Agreements
Report of	Cath Shaw, Enterprise and Regeneration Lead Commissioner
Wards	Childs Hill, Golders Green and West Hendon
Status	Public
Enclosures	<p>Appendix 1: CRC Report and Minute 16 January 2014.</p> <p>Appendix 2: Exempt – Legal Report dated 7 October 2010 and the Addendum to Legal Report dated 7 October 2010 (Eversheds) Not for publication by virtue of paragraph 5 of Schedule 12A of part 1 of the Local Government Act 1972 (as amended)</p> <p>Appendix 3: Exempt – Advice Note dated January 2014 and 21 July 2014 from CBRE to London Borough of Barnet Not for publication by virtue of paragraphs 3 of Schedule 12A of part 1 of the Local Government Act 1972 (as amended)</p> <p>Appendix 4: Exempt – Interim Franking report dated January 2014 and Updated Report dated July 2014. Not for publication by virtue of paragraph 3 of Schedule 12A of part 1 of the Local Government Act 1972 (as amended)</p>
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Summary

To execute the commercial agreements in respect of the Brent Cross Principal Development Agreement and the Co-Operation Agreements in accordance with the terms approved by Cabinet Resources Committee dated 16 January 2014.

Decisions

1. To authorise the execution of the Brent Cross Cricklewood Principal Development Agreement and Co-operation Agreements.

1. WHY THIS REPORT IS NEEDED

- 1.1 This report is needed to authorise the execution of the Brent Cross Cricklewood commercial agreements to ensure the delivery and comprehensive regeneration of the Brent Cross Cricklewood Regeneration proposals. This is in accordance with resolution of the Cabinet Resources Committee on 16 January 2014, which authorised the Chief Executive in consultation with the Leader of the Council to agree the detail of the Brent Cross Cricklewood Principal Development Agreement and Co-Operation Agreements.

2. REASONS FOR DECISIONS

- 2.1 In 2010 the Cabinet Resources Committee approved the changes to the terms and conditions of the Development Framework Agreement and the two Principal Development Agreements regarding Brent Cross Cricklewood (as considered and approved by Cabinet in October 2009). These Agreements were not entered into.
- 2.2 The report to the April 2013 Cabinet Resources Committee explained that the Development Partners wished to focus solely on the delivery of the shopping centre at Brent Cross and the significant critical infrastructure required to support the wider Brent Cross Cricklewood comprehensive regeneration proposals; and that the Council take the lead on the south side to deliver the southern parts of the Brent Cross Cricklewood Regeneration masterplan.
- 2.3 The Council instructed GVA to provide strategic property development advice on the delivery of Brent Cross Cricklewood South, focussing on reviewing the southern area and undertaking a detailed technical due diligence review of the overall infrastructure and development costs to inform scheme viability.
- 2.4 This process has identified a first phase scheme that could bring forward circa 2,421 residential units, plus 190,000 sq ft of retail accommodation to provide the new high street linking into the Living Bridge and Brent Cross Shopping Centre thus creating the new town centre, over an 8-10 year period.
- 2.5 On the basis of their market review alongside the key provisions set out in the Brent Cross Cricklewood Principal Development Agreement and the Co-operation Agreement, namely the delivery of the critical infrastructure and the provision of services to specific development plots within the first phase, GVA considered that there is a viable first phase market proposition.
- 2.6 On the basis of GVA's advice, Cabinet Resources Committee approved on 16 January 2014 the issue of a Prior Information Notice to undertake market testing and to develop a Procurement and Delivery Strategy to secure a partner to work with the Council to deliver the BXC South regeneration proposals. This Strategy was reported to and approved by the Assets,

Regeneration and Growth Committee on 9 July 2014, and the formal OJEU compliant procurement process commenced on 21 July 2014.

- 2.7 As reported to the Cabinet Resources Committee on 16 January 2014, the commercial agreements previously approved by the Committee on 19 October 2010 needed to be updated to reflect this new delivery approach.
- 2.8 The 16 January 2014 Public and Exempt Reports clearly set out the key terms in respect of the Principal Development and Co-Operation Agreements.
- 2.9 The Cabinet Resources Committee on 16 January approved the key variations to the Brent Cross Principal Development Agreement and the heads of terms relating to the Co-operation Agreement, including option to acquire Cricklewood Regeneration Limited.
- 2.10 The CRC Reports and Minute of the Cabinet Resources Committee are attached at appendix 1. The Committee resolved to
 - a) approve the changes to the terms of the Brent Cross Principal Development Agreement (as considered and approved by CRC in October 2010) as set out in Section 9 of this report;
 - b) approve the terms for the Co-operation Agreement as set out in Section 9 of this report;
 - c) authorises the Chief Executive in consultation with the Leader of the Council to agree the detail of the Brent Cross Principal Development Agreement and Co-operation Agreement;
- 2.11 Since January 2014, the Council and its legal and property advisors have been working with the Development Partners to prepare the detailed legal agreements in accordance with the key terms as approved by Cabinet Resources Committee to ensure the delivery and comprehensive development of the Brent Cross Cricklewood Regeneration area.
- 2.12 In addition to the variations to the PDA and the key terms for the Co-Operation Agreement, the Critical Infrastructure document has been drafted detailing the Critical Infrastructure items, comprising highways, service diversions, network re-enforcements, new utilities and landscaped open space areas to be delivered by the Development Partners in the southern masterplan area to facilitate the first BXC South development phases.
- 2.13 Regular updates have been provided to the Brent Cross Cricklewood Governance Board and to the Leader of the Council.
- 2.14 The commercial agreements are now in final draft and have been reviewed by the Council's advisors. This report must be read in conjunction with the accompanying advisor reports appended to this DPR, which provide a detailed account of the commercial and financial terms.

- 2.15 The Brent Cross Principal Development Agreement as reported to Cabinet Resources Committee in 2010 remains largely as agreed. Consequently, the Legal Report prepared by Eversheds dated 7 October 2010 (as reported to Cabinet on 19 October 2010) remains relevant.
- 2.16 An Addendum to the October 2010 report has been produced by Eversheds and is attached at appendix 2 (Exempt). This clearly sets out the variations to the PDA, relocation of the Whitefield Estate and Rosa Freedman Care Facility, the draft Compulsory Purchase Indemnity Agreement, the Co-operation Agreement and the option for the Council to acquire Cricklewood Regeneration Limited. This report confirms that Eversheds advice in relation to “best consideration” and “the powers of the Council” contained in their Original Legal Report remains unchanged (see paragraph 9.2).
- 2.17 The Council’s property advisors have also reviewed the final documents.
- 2.18 CBRE in their letter dated 21 July 2014 confirms that the transaction still fulfils the requirements of S233 and that this transaction is the best that can be reasonably be negotiated with the Development Partners (appendix 3-exempt).
- 2.19 Importantly, following on from their Interim Franking Report reported to 16 January 2014 Cabinet Resources Committee, GVA has also confirmed that the revised Phase 1 scheme will be viewed by the market as a viable and deliverable proposition (see appendix 4).
- 2.20 The final draft commercial agreements and accompanying advisor reports were reported to the BXC Governance Board on 22 July 2014. BXC Governance confirmed that the Chief Executive in consultation with the Leader should now agree the final detail and authorise the execution of the documentation.
- 2.21 The delegations granted to officers under the previous Governance regime remain valid, and as such the Chief Executive in consultation with the Leader of the Council is authorised to execute these documents.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3.1 The action for the Chief Executive, in consultation with the Leader, to agree the detail and authorise the execution of the commercial agreements fulfils the approved recommendation of the Cabinet Resources Committee dated 16 January 2014 (Decision Item 6).

4. POST DECISION IMPLEMENTATION

- 4.1 Once the decision has been approved the commercial agreements will be executed. The Legal Reports prepared by Eversheds and attached at

appendix 2 provides details on the staging conditions to enable the contract to go unconditional.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The regeneration of Brent Cross Cricklewood supports the Corporate Plan 2013-2016 priority to *'promote growth development and success across the borough'* and contributes to the corporate plan outcome *'To maintain the right environment for a strong diverse local economy'*.

5.1.2 The 2012 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.

5.1.3 The first phases of the Brent Cross Cricklewood project includes the redevelopment of the shopping centre, creation of major new infrastructure, improved links to the existing tube station, and delivery of around 2,461 new homes over the next 8-10 years. This will create an estimated 3,000 construction jobs, and 4,000 permanent jobs.

5.1.4 As well as meeting the housing and employment needs of residents, growth can play a role in the longer term sustainability of Council services. The first phase of development at Brent Cross Cricklewood is expected to generate approximately an additional 91,500 sqm of net retail and commercial floorspace, equating to a potential business rate growth for the Borough of up to £12.9m per annum. The 2,461 new homes delivered over the next ten years are expected to generate around £21.5m in New Homes Bonus payments and around £3.5m per annum in Council Tax when developed out.

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

5.2.1 Under the terms of the existing Collaboration Agreement signed by the Council and the Development Partners, Hammerson/Cricklewood Regeneration Limited and Standard Life are obliged to pay the Council's costs in connection with this project.

5.2.2 The Brent Cross Principal Development Agreement (which supersedes the Collaboration Agreement) re-confirms that the Development Partners are

obliged to pay the Council's (and its consultants) costs in connection with this project. This includes the Compulsory Purchase Order (CPO) costs associated with the acquisition of land required for the shopping centre and infrastructure works. A CPO Indemnity Agreement has been drafted and will be annexed to the Brent Cross Principal Development Agreement. This will be entered into prior to any CPO Order to ensure that the Council's costs are covered in respect of the land required by for the Brent Cross Shopping Centre extension.

- 5.2.3 The Development Partners will provide the required funding to enable the Council to procure a delivery strategy and partners as set out in the Co-operation Agreement to be entered into.
- 5.2.4 In respect of future planning and transport work, including discharge of conditions and reserved matters applications associated with this project, Planning Performance Agreements will be entered into to ensure that all Council's costs are recoverable.
- 5.2.5 The financial and commercial terms within the PDA and Co-Operation Agreements are explained in detail in the advisor reports appended to this DPR at appendices 2, 3 and 4.

5.3 Legal and Constitutional References

- 5.3.1 The Council's Constitution, Responsibility for Functions, Annex B states the powers delegated to Officers, including that the Chief Executive has lead responsibility to implement the Council's policies, ensuring that it delivers to its objectives and duties, within budget and according to strategic priorities and statutory requirements.
- 5.3.2 The Council has a power of general competence under Section 1 of Chapter 1 of the Localism Act 2011 and this empowers the Council to enter into legal arrangements for the development of the Brent Cross Cricklewood regeneration scheme. Section 1 of the Localism Act 2011 provides local authorities with a broad power to do anything that individuals can do subject to any specific prohibitions and restrictions on Local Government powers pre-dating the power of general competence.
- 5.3.3 The Council has the power to acquire and dispose of land in accordance with Sections 120 to 123A of the Local Government Act 1972, and subject to obtaining appropriate consents and approvals.
- 5.3.4 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.

- 5.3.5 Section 111 of the Local Government Act 1972 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.
- 5.3.6 The public sector equality duty referred to in Section 5 also required consultation to ensure the Council complies with its duties under the Equality Act 2010.

5.4 Risk Management

- 5.4.1 The key risks are clearly set out in the 16 January 2014 report to CRC attached at appendix 1 and advisor reports in support of this DPR.
- 5.4.2 The key risks and issues must be seen in the context of the real potential regeneration benefits of the scheme coming forward and the likely impetus that this will have for comprehensive development, including a new station. The various agreements being signed do not impose any development obligations on the Council, but if the South does proceed, there are various constraints which the Brent Cross Development Partners has required as a condition of delivering the infrastructure which will serve the Southern Development.

5.5 Equalities and Diversity

- 5.1 The public sector equality duty under section 149 of the Equality Act 2010 ("PSED") requires the Council to have due regard to: (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; and (ii) the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. 'Protected characteristics' are: gender, race and disability, sexual orientation, age, religion or belief, pregnancy and maternity and gender reassignment.
- 5.2 The Council is committed to improving the quality of life for all and wider participation in the economic, educational, cultural, social and community life in the Borough.
- 5.3 The development proposals for the Brent Cross Cricklewood scheme 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. The delivery of the Thameslink Station will enhance public transport provision and improve accessibility and provide greater choice for all. It should be emphasised that a fully integrated and accessible town centre will be created as part of these proposals.

- 5.4 Extensive consultation has and will continue to be undertaken with the community to ensure that the scheme reflects local needs including the needs of those with protected characteristics, as well as securing the future of North London's only regional shopping centre. This has included specific consultation in respect of the Whitefield Estate Residents and the occupiers of the Rosa Freeman Care Centre. The approach 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.
- 5.5 In this regard, the Council and the Development Partners have appointed an Independent Residents Advisor to work with the residents on the Whitefield Estate within the regeneration area, and have established the Whitefield Estate Steering Group. The Council meets with the Steering Group on a regular basis.
- 5.6 It is important to note that all relevant equalities and diversity issues were considered as part of the original planning application, which was approved in October 2010.
- 5.7 The equalities implications will be regularly reviewed and updated during the life of the project.

5.6 Consultation and Engagement

- 5.6.1 Extensive consultation has and will continue to be undertaken with key stakeholders and the community to ensure that the Brent Cross Cricklewood scheme reflects local needs including the needs of those with protected characteristics, as well as securing the future of North London's only regional shopping centre.

6. BACKGROUND PAPERS

- 6.1 Cabinet, 26 April 2004 (Decision Item 8) – approved the adoption of the Cricklewood, Brent Cross and West Hendon Development Framework as Supplementary Planning Guidance.
- 6.2 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/Data/Cabinet/200503291900/Agenda/Document%204.pdf>]

- 6.3 Cabinet, 5 December 2005 (Decision Item 7) – approved, amongst other matters, that 1) the Eastern Lands Addendum be adopted as Supplementary Planning Guidance; and 2) the Eastern Lands Supplementary Guidance is incorporated into the Cricklewood, Brent Cross and West Hendon Development Framework.
[<http://barnet.moderngov.co.uk/Data/Cabinet/200512051900/Agenda/Document%204.pdf>]
- 6.4 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 and the Principal 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>
- 6.5 Cabinet, 21 October 2009 (Decision Item 7) – approved the terms and conditions of entering into the Development Framework Agreement and the Principal Development Agreements, 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.
<http://barnet.moderngov.co.uk/CeListDocuments.aspx?CommitteId=120&MeetingId=306&DF=21%2f10%2f2009&Ver=2>
- 6.6 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 Principal Development Agreements regarding Brent Cross Cricklewood (as considered and approved by Cabinet in October 2009)
[<http://barnet.moderngov.co.uk/Data/Cabinet%20Resources%20Committee/201010191900/Agenda/Document%203.pdf>]
- 6.7 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/mgConvert2PDF.aspx?ID=8369&ISATT=1#search=%22Brent%20Cross%20%22>]

6.8 Cabinet Resources Committee, 16 January 2014 (Decision Item 6) - approved the changes to the terms of the Brent Cross Principal Development Agreement (as considered and approved by CRC in October 2010) and the terms for the Co-operation Agreement as set out in Section 9 of this report; authorised the Chief Executive in consultation with the Leader of the Council to agree the detail of the Brent Cross Principal Development Agreement and Co-operation Agreement; approved commencement of market testing through the issue of a Prior Information Notice to inform the delivery strategy for the Brent Cross Cricklewood South area; and approve that the Council enter into negotiations with landowners to acquire land required in advance of any Compulsory Purchase Order, subject to approval of the bid for capital funding by Cabinet on 25 February 2014; and approved that the Council continue the design and development work to develop the business case and funding strategy for delivery of the Thameslink Station, subject to approval of the capital funding bid by Cabinet on 25 February 2014; and delegate authority to the Strategic Director for Growth and Environment to procure the necessary advice and consultants to progress the Brent Cross project workstreams and deal with the related contractual issues and arrangements.
[<http://barnet.moderngov.co.uk/mgConvert2PDF.aspx?ID=12505&ISATT=1#search=%22Brent%20Cross%20%22>]

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>]

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

- 8.1 that, following consultation with the Leader of the Council, the Brent Cross Cricklewood Principal Development Agreement, Co-operation Agreement and the option to acquire the share capital of Cricklewood Regeneration Limited are now agreed and that the documents should be executed on behalf of the Council.

Signed Cath Shaw, Enterprise and Regeneration Lead
Commissioner

Date 23 July 2014
