

	ACTION TAKEN UNDER DELEGATED POWERS BY ACTING CHIEF OPERATING OFFICER
Title	Brent Cross Shopping Centre – opting to tax
Report of	Interim Chief Operating Officer
Wards	Childs Hill, Golders Green and West Hendon
Status	Public
Enclosures	None
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Summary

The Council is entering into a conditional development agreement (PDA) for the redevelopment and extension of the Brent Cross Shopping Centre. The PDA contains a general charging clause in respect of VAT to the effect that any sums paid, or other consideration provided, under the Agreement for the supply of goods and services, are exclusive of VAT chargeable in respect of the payment or other consideration given and that VAT should be paid on any supply.

As part of this agreement, the Council must ensure that it has made a valid option to tax in relation to the Council's interest in the Centre, with effect from a date on or before completion of the Surrender, and the grant of the new headlease. The proposed VAT provision also includes an obligation on the Landlord to seek any necessary permission from HMRC.

The Council has not yet opted to tax its interest in the property. Once the Council opts to tax their interest in the Centre, all supplies made in relation to this interest will normally be standard rated. In addition, the Council would be able to recover any VAT incurred in making those supplies.

Decision

- 1. To approve the recommendation to opt to tax on the Council's land and buildings in Brent Cross Shopping Centre and to authorise officers to seek formal approval from HMRC.**

1. WHY THIS REPORT IS NEEDED

- 1.1 To confirm that a decision has been made to opt to tax Council's land and buildings in Brent Cross Shopping Centre

2. REASONS FOR DECISIONS

- 2.1 The Council is entering into a conditional development agreement (PDA) for the redevelopment and extension of the Brent Cross Shopping Centre. The PDA contains a general charging clause in respect of VAT to the effect that any sums paid, or other consideration provided, under the Agreement for the supply of goods and services, are exclusive of VAT chargeable in respect of the payment or other consideration given and that VAT should be paid on any supply.
- 2.2 The Developers wish to include a provision in the Option that the Council warrants and undertakes to the Developers that the Council will ensure that it has made a valid option to tax in relation to the Council's interest in the Centre, with effect from a date on or before completion of the Surrender, and the grant of the new Headlease.
- 2.3 The proposed VAT provision also includes an obligation on the Landlord to seek any necessary permission from HMRC, in accordance with paragraph 28 of Schedule 10 to the Value Added Tax Act 1994 to make such option to tax and to give written notice to HMRC, in accordance with paragraph 20 of Schedule 10 to VATA, and, in any event, by no later than the completion date that such option has been made.
- 2.4 The combination of the proposed surrenders and grant of the new headlease constitute a barter for VAT purposes and, as the Hammerson and Standard Life entities have (or will have) opted to tax, those entities will have to account for VAT on the value of the supplies made to the Council. By virtue of the relevant VAT charging clauses in the documents, that VAT cost will have to be passed to the Council.
- 2.5 The Council has not yet opted to tax its interest in the property. The main headlease was granted in 1982 prior to the introduction of the VAT Option to Tax legislation and since then, the Council has not incurred significance levels of input tax in relation to the property, which has required the Council to make such an option.
- 2.6 In the light of the Developers' requirement that the Council agree to opt to tax in respect of the property, the Council is required to protect its VAT recovery

position and has taken legal advice from its VAT advisor KPMG on the treatment of VAT to confirm that it is appropriate to opt to tax this property.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3.1 The development sums involved means that the Council cannot take advantage of the rules relating to performance of its statutory non-business functions and/or the 5% de minimis threshold for exempt supplies

4. POST DECISION IMPLEMENTATION

- 4.1 An application will be made to HMRC to opt to tax the Council's property in Brent Cross Shopping Centre and the decision will be confirmed to the development partners.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.2 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.

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

5.3.1 The Council is currently entitled to 1% of the rents from the occupation tenants at the Centre. The current minimum rent is £390,000 per annum.

5.3.2 Supplies of land and buildings, such as freehold sales, leasing or renting, are normally exempt from VAT. This means that no VAT is payable, but the person making the supply cannot normally recover any of the VAT incurred on their own expenses

5.3.3 Once the Council opts to tax their interest in the Centre, all supplies made in relation to this interest will normally be standard rated. In addition, the Council would be able to recover any VAT incurred in making those supplies.

5.4 Legal and Constitutional References

5.4.1 The Council has taken legal advice from its VAT advisor KPMG and has received confirmation that it is appropriate to opt to tax.

5.4.2 Council Constitution, Responsibility for Functions, Annex B (Scheme of Delegated Authority to Officers) – section 1.1 provides that Chief Officers can take decisions in all matters where they managerial or professional responsibility; section 1.6 states that formal reporting of decisions will take place if actions or decisions involve the "...exercise of specific powers pertaining to finance, borrowing and investments".

5.5 Risk Management

5.5.1 In order to ensure risks on this decision were minimised, the Council took VAT advice from their specialist tax advisers.

5.5.2 If the Council opted not to tax, the Council would be in default of the legal agreements. Therefore opting to tax fulfils this requirement.

5.6 Equalities and Diversity

5.6.1 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.

- 5.6.2 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.
- 5.6.3 The development proposals for the BXC 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.
- 5.6.4 An Equalities Impact analysis was carried out in respect of the Outline Planning Application granted in 2010, which took fully into account the demographic makeup of the regeneration area and addressed the impact on the protected characteristics. This anticipated a significant positive impact from the regeneration proposals.
- 5.6.5 BXC is an opportunity to extend Barnet's success as a desirable and attractive suburb, by creating a new urban village for London which sets the tone for future evolution of the borough more widely and emphasises the need to create a place that makes residents, workers and visitors feel good – inviting people to meet and spend time in the spaces, and to walk or cycle.
- 5.6.6 Importantly, the requirements highlight that BXC will be place for people of all ages, with housing mix that reflects different life stages, a range of housing tenures, and public spaces which are accessible to all. It emphasises that promoting health and wellbeing and reducing dependency will be ingrained in the place.

5.7 Consultation and Engagement

- 5.7.1 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 None

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 To approve the recommendation to opt to tax on the Council's land and buildings in Brent Cross Shopping Centre and to authorise officers to seek formal approval from HMRC.

Signed



Date

27/2/15.
