



Policy and Resources Committee

11 December 2018

Title	Brent Cross Cricklewood Funding and Delivery Strategy Report
Report of	Chairman of the Policy and Resources Committee
Wards	All
Status	Public
Urgent	No
Key	Yes
Enclosures	Appendix 1: Station Works programme Appendix 2: Full Business Case Executive
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Summary

This report provides a progress update on the comprehensive regeneration of Brent Cross Cricklewood (BXC). It seeks approval for some immediate decisions to maintain project momentum, including allocating most of the £97m government grant within the capital programme. In relation to delivery of the new Thameslink Station at Brent Cross West, the report seeks approval to enter into the Implementation Agreement with Network Rail to deliver the Sidings and Rail Systems works and to commission the first phase of works under that agreement. It also recommends that the Council commence an OJEU procurement for the station platforms and station access / pedestrian bridge.

Given the strategic importance of BXC and the scale of the investment proposed in the delivery of the new station, Full Council's approval will be sought on 18 December 2018 to confirm that the council should proceed with the station project (BXT), and that the second stage of works under the Implementation Agreement should be commissioned *provided* Policy and Resources Committee is satisfied at its meeting in February that the Revised Funding Agreement (RFA) with HM Government (HMG) does not leave the council exposed to unacceptable risk.

Officers Recommendations

That the Committee:

- 1) Notes that on 27 November the Assets, Regeneration and Growth Committee received an update on progress with the Brent Cross Cricklewood (BXC) project and agrees the next steps in delivering the project, subject to confirmation of funding by this Committee.**
- 2) Notes that given the strategic importance of BXC and the scale of the investment proposed in delivery of the new Thameslink station at Brent Cross West (BXT), confirmation will be sought from Council on 18 December 2018 of the council's continuing commitment to the delivery of BXT and other elements of the critical infrastructure needed to support BXC.**
- 3) Subject to that confirmation by Council, authorises the Deputy Chief Executive to enter into the Implementation Agreement with Network Rail and to commission the Schedule 1A (site set up) works set out in that agreement.**
- 4) Notes that Council will be further asked to delegate to this Committee the decision to commission the Schedule 1B (rail systems and sidings) works provided: (a) a Revised Funding Agreement (RFA) has been agreed with HM Government (HMG); and (b) that the RFA does not expose the council to unacceptable risk.**
- 5) Notes progress on agreeing the RFA with HMG as set out in paragraphs 1.14-1.21.**
- 6) Notes the update on the financial tests set by the Committee in July 2014 and approves the proposed revisions to these tests for the council to assure itself that the prudential code can be satisfied, before making any capital commitment that borrowing can be undertaken to deliver the Thameslink Station (paragraphs 1.22-1.39).**
- 7) Approves the revised capital budgets for FY2018/19 as detailed in paragraphs 1.13 and 5.2.4 of this report.**
- 8) Notes that the final RFA and any consequential capital budget approvals required are expected to be reported to the Committee on 20 February 2019.**
- 9) Approves that the council commence an OJEU procurement for the station platforms and station access / pedestrian bridge elements of the programme as set out in paragraphs 1.43-1.52 of this report and that the evaluation process and contract award decision will be reported to the Assets, Regeneration and Growth Committee for approval prior to entering into the contract.**

1. WHY THIS REPORT IS NEEDED

- 1.1 This report seeks the necessary funding and procurement approvals to maintain the delivery of the BXC programme and implement the delivery strategy approved by the Assets, Regeneration and Growth Committee on 27 November 2018. It also provides an update on progress on agreeing the Revised Funding Agreement (RFA) with HM Government (HMG) and on the financial tests set by the Committee in July 2014 for the council to assure itself that the prudential code can be satisfied, before making the capital commitment that borrowing can be undertaken to deliver the Thameslink Station (BXT). The final RFA and any consequential capital budget approvals required are expected to be reported to the Committee on 20 February 2019.

Background and Project Update

- 1.2 The comprehensive regeneration of the BXC area is a long-standing council objective.
- 1.3 Planning consent was granted in 2010 for comprehensive regeneration of Brent Cross Cricklewood (BXC), including 7,500 new homes, 455,220sqm commercial, extensive infrastructure (notably investment in the A406 North Circular) and doubling the size of Brent Cross Shopping Centre.
- 1.4 The scheme is being delivered in three parts:
- **Brent Cross North (BXN)** – the shopping centre expansion, critical highways infrastructure and 800 homes. Planned to be delivered by Hammerson & Aberdeen Standard Investments, owners of the shopping centre.
 - **Brent Cross Thameslink (BXT)** – the new station being delivered by Barnet Council and funded in partnership with the wider public sector following approval of the Full Business Case by HM Government (see paragraphs 1.14-1.21 of this report). Further information is provided within the FBC Executive Summary attached at appendix 2. The council is due to enter into contract with Network Rail (NR) in December 2018; with the station opening in May 2022. Any slippage in entering into the NR contract will delay the station opening at least until May 2023 if not later.
 - **Brent Cross South (BXS)** – 6,700 homes, a new office location and related social and 'hard' infrastructure. Being delivered by Argent Related in joint venture with the council. Start on site due 2019, housing completions 2021/22 onwards. BXS is dependent on delivery of the station and some elements of the BXN critical infrastructure, with office development timed to coincide with station opening.
- 1.5 Substantial progress has been made on all three projects since 2014 as set out in previous quarterly reports to the Assets, Regeneration and Growth (ARG) Committee to reach the point of delivery. Detailed planning has been granted for the first phases and the ability to acquire the land needed for the programme has been achieved through the confirmation of the three Compulsory Purchase Orders (CPO's) over the last 18 months. All programmes had been working to start on site by the end of December 2018. The BXT project has already started early site preparatory works to remove Japanese Knotweed and construction spoil from the sidings area in anticipation of the main works starting in January 2019.

- 1.6 As reported to ARG in September 2018, the shopping centre owners have deferred start on site for the shopping centre development. Whilst no fixed timetable has been provided, the project team are continuing to secure the necessary planning condition approvals and work with the council's integrated project management team on construction and logistics to enable a start on site. To ensure that BXN's deferral does not delay the comprehensive redevelopment of BXC, the council has been working with both the BXN and BXS partners to revise the delivery strategy to enable BXT and BXS to commence ahead of BXN as well as agreeing an alternative funding strategy with HMG.
- 1.7 The revised delivery strategy was approved by ARG on 27 November 2018 and the BXC Partners have agreed a programme to submit the required planning applications in March 2018 for determination in May 2016.
- 1.8 The project is at a critical stage. The development of new homes and offices relies on the delivery of the new train station. The station is scheduled to open in May 2022, and to meet that opening time, the team need to use the line closures (known as "rail possessions") booked for Easter 2019. Missing this opportunity will delay the station opening by at least 12 months. It will also introduce significant uncertainty into the programme which is very likely to have knock on effects to the delivery of homes and offices. Maintaining project momentum is therefore crucial for delivery of the new homes, the first of which are currently due to be available from 2021/22.
- 1.9 Subject to the required funding approvals, the council is now ready to enter into the Implementation Agreement (IA) with Network Rail for the Sidings and Rail Systems works to secure the comprehensive development of BXC and delivery of the station and first new homes by 2022.
- 1.10 The IA is now in its final form. The Sidings and Rail Systems work package is separated into two work schedules: Part 1A – Site Set up which NR needs to be let by 15 January 2019 to their subcontractor; and Part 1B main works to the railway which needs to be commissioned by 21 February to meet the key rail possessions already booked for Easter and November/Christmas 2019.
- 1.11 The Committee is asked to note that the costs of the Schedule 1A works can be contained within the already agreed £97m grant from HMG alongside existing contractual commitments and that the Schedule 1B works will need to have the HMG Revised Funding Agreement in place prior to commissioning given that business rates growth from BXN can no longer be relied upon.
- 1.12 Further information on the project delivery strategy and sequencing of works can be found in the November 2018 ARG Committee report. <http://committeepapers.barnet.gov.uk/documents/s49849/Brent%20Cross%20Cricklewood%20Update%20Report.pdf>

Revised Capital Budgets

- 1.13 The council has taken the approach of adding elements of the programme to the capital programme at the point where there are commissioned. Therefore, in order to enable works to start in January 2019 as approved by ARG, the Committee's approval is sought to increase the capital budget for the remainder of FY18/19 as listed below.

- 1) Increase the Thameslink capital budget for the remainder of FY18/19 so that the council can enter into the Implementation Agreement with Network Rail to deliver the Sidings and Rail Systems and proceed with the Stage 1A Site Set Up works in accordance with the Thameslink Delivery programme for the station opening in May 2022. The current approved budget in the capital programme is £70.516m, which includes £28.385m in 2019/20 which will need to be accelerated. An additional £22.27m is required taking the total budget to £92.79m for the station and associated infrastructure works. This includes £4m for reinstatement if the scheme does not progress. The BXC budget increases for the Thameslink station and associated infrastructure (BXT station) will be funded from the MHCLG grant allocated to the Council for this purpose. The GLA has also provided a grant of £2.9m to support the BXC Programme.
- 2) to reprofile existing capital commitment by bringing forward part of the lending currently scheduled for 2019/20 into 2018/19 to support the amended delivery strategy. The Council has previously agreed to lend £23m to the BXS Joint Venture Limited Partnership (between the council and Argent Related) to kick off the provision of BXS infrastructure. The terms are currently being finalised following approval by ARG on 17 September 2018. The revised delivery strategy now means that these funds will be required by the JVL in this financial year.

Thameslink Alternative Funding Strategy

- 1.14 The funding package in the Full Business Case (FBC) approved by this Committee and HM Government (HMG) in 2016 relies on the ring-fencing of the local share of business rate growth from the expansion of the shopping centre to repay council borrowing to part-fund the development of the new Thameslink Station at Brent Cross West. The FBC Executive Summary is attached at appendix 2. This was documented in the Grant Funding Agreement dated 17 January 2017. The ringfence came into effect on 1 April 2018 and lasts for 12+3 years (or until the loan is repaid if sooner). Government grant of £97m was also provided as an alternative to the original suggestion of including the central share of business rates within the ringfence.
- 1.15 The Committee will recall that the council's investment in the BXT station and critical infrastructure was predicated on the BXN partners commencing the shopping centre development. This gave sufficient confidence that the business rates growth to support the borrowing costs would be realised.
- 1.16 The delay to the shopping centre expansion means that the borrowing needed to fund BXT the station cannot be contained within the existing business rate ringfence, the council is progressing discussions with HMG to agree an alternative funding solution. In this regard, the Council/HMG have been focusing on three challenges:
 - (1) ensuring that any borrowing is repayable from ringfenced business rate growth;
 - (2) availability of cashflow support for any interest payments before business rate growth is available; and
 - (3) ensuring that the council is sufficiently protected against risk.

- 1.17 All parties are working to agreeing the funding solution. Two solutions have been identified and are currently being discussed with HMG.
- Option 1 - HMG forward funding and investment in the station to unlock 7,500 new homes in return for 100% of the ringfenced local share of business rates growth for an agreed period.
 - Option 2 - If forward funding is not provided, the funding model is essentially the Risk Mitigation Option set out in the Full Regeneration Business case i.e. use the business rates growth from BXS only but with specific mitigations put in place to manage each of the points set out in paragraph 1.16 to ensure that the council is protected if BXS is not delivered, cost increases or business rates change. In this option, the key council asks to HMG are to amend the existing Grant Agreement to:
 - a) Extend the ring-fence area to include BXS for 25 years and reset the baseline to 1 April 2019.
 - b) Provide financial support for any unfunded interest
 - c) HMG write off any outstanding debt at 25 years
- 1.18 The BXC Business Rate Financial model currently shows that reliance on BXS Business Rates growth results in a payback period of 22 years (this is a reduction from 25.75 years pay back in FBC Feb 2016) reflecting the growing momentum behind the BXS programme that includes significant non-residential uses and increased confidence in BXS as an employment location as a direct consequence of the station and discussions with the market.
- 1.19 Discussions with MHCLG, GLA and Homes England are ongoing. All parties are working to having a finalised funding solution by 11 February for reporting to the Policy and Resources Committee on 20 February 2019 so that the council can confirm to Network Rail to commence Part 1B of the Implementation Agreement - Sidings and Rail Systems works by 1 March 2019 to meet the BXT station programme (Part 1A works will be funded through the existing grant in place as set out above).
- 1.20 MHCLG is in the process of writing to the council ahead of the Committee to confirm:
- a) that Government remains committed to delivery of the scheme, and in particular the 6,700 new homes to be delivered at Brent Cross South;
 - b) commitment to continue to work with the council to identify a preferred option with a view to putting in place a Revised Funding Agreement by 11 February 2019;
 - c) the council should maintain the programme and enter into an Implementation Agreement with Network Rail for the Sidings and Rail Systems noting that the IA is split into two work schedules: Part 1A – Site Set up and Part 1B main works to the railway;
 - d) Part 1A works should be progressed and funded from the already agreed £97m grant and acknowledge that Part 1B works will commence on the issue of any revised funding agreement;
 - e) the milestones set out in the existing agreement have been met and that the council is progressing the project in accordance with the terms of the grant agreement dated 17 January 2017;

f) costs to date have been properly incurred by the council.

- 1.21 This Revised Funding Agreement is expected to be reported to the Committee on 20 February.

Update on the Six Financial Tests set by P&R, July 2014

- 1.22 The Committee set itself six financial tests in July 2014 for the council to assure itself that the prudential code can be satisfied, before making the capital commitment that borrowing can be undertaken to deliver the Thameslink Station.

<http://barnet.moderngov.co.uk/documents/g7860/Public%20reports%20pack%2021st-Jul-2014%2019.00%20Policy%20and%20Resources%20Committee.pdf?T=10>

- 1.23 An update on the six tests is set out below, in some instances the tests need to be updated to reflect scheme development, and some will not be relevant should forward funding be formalised through the Revised Funding Agreement. A summary of the current and proposed tests is set out in the table at paragraph 1.39.

a) A guarantee of ring-fencing (or equivalent assurance) of business rates received from HMG and CLG (100% if fully funded from business rates, 50% if partially funded from business rates and partially funded by grant);

- 1.24 The revised BXC delivery strategy and entering into the BXT contracts commits the council to significant construction spend on BXT and £55m on critical infrastructure. As set out in the ARG reports, the council cannot take this risk without a funding solution in place that meets the requirements set out in paragraph 1.16 above.

- 1.25 As set out above the preferred option is for MHCLG to forward fund BXT and the critical infrastructure. If Option 2 (as set out in paragraph 1.17 above) the council will seek specific mitigations to be put in place to manage each of the points set out in paragraph 1.16 within the Revised Funding Agreement to ensure the Business Rate Regulations are amended to protect the council if BXS is not delivered or in the event of cost increases, reduction in business rates income growth or changes to business rates to accord with this test.

b) Confirmation that business rates will still pay back borrowing in 25 years if estimates of total business rate expansion are reduced by 40%;

- 1.26 This aim of this test was to ensure that there is sufficient resilience in the funding model if business rates income was reduced. This was at a time when the scheme was at outline business case stage and the scheme's detailed design had not progressed sufficiently for a detailed calculation of the business rates income.

- 1.27 The Business Rates (BR) model has been further refined since the approval of the six tests in 2014 with Link Financial Services and CBRE advising the council. The BXN and BXS schemes have progressed significantly and the BR model is now based on detailed designs, net internal area calculations, delivery sequences (for demolition and construction) and leasing strategies for all non-residential use within the whole of the Brent Cross Cricklewood development. It includes allowances for tenant incentives (e.g. rent-free periods) in the calculation of the forecast rateable values. The model also

adopts cautious rental growth and hence forecast rateable values. The model therefore gives a significantly more sophisticated picture of business rate income over the lifetime of the project.

- 1.28 In all cases it has been assumed that the ringfence around the shopping centre remains in place, and that it is extended to include, or be supplemented by, a ring fence around the south side. The variables modelled are then whether, and at what pace, the shopping centre expansion and southern development come forward.

1) *Baseline – FBC Risk Mitigation Scenario – south side only*

The BR model calculates the pay back borrowing period based on the FBC risk mitigation option south side only as 20 years in accordance with the current business rate regulations (19 years if base date for the regulations is revised to 1 April 2019). The costs in the Model for the station are based on the GRIP 4 costs provided by Network Rail in February 2018.

2) *Most likely option - Inclusion of north side reduces payback to 14.5 years*

If the north side, the Brent Cross Shopping Centre (BXSC) expansion, is included (based on a start date July 2019 and opening March 2024), the payback period reduces to 14.5 years in accordance with the current business rate regulations (13.5 years if the base date for the regulations is revised to 1 April 2019). The BXN Partners are continuing to progress the scheme. However, the council cannot commit to the borrowing for the station given the BXN deferral announcement in summer 2018, hence the need to progress the risk mitigation option in line with the FBC.

- 1.29 Having reviewed this information, the figure of 40% was a reflection of the fact that detailed scheme design and rental strategies were not known at the time the model was created. Much more detail is now known and has been factored in. While this risk has reduced, the risk of cost overrun has emerged as a much more likely risk. The finance team therefore now recommend that this test should be updated and replaced by a sensitivity test that relate to cost increase by 15% on Network Rail controllable costs.
- 1.30 In this regard, a number of sensitivity tests have been run to reflect cost increases, reduction in income and delays to the project. These demonstrate that in a 'worst case' combined scenario of a substantial cost increase, 10% reduction in BR income, and a six months delay in project delivery, the payback period is just over the original maximum parameter of 25 years.

c) *That interest costs are capped at no more than 4.5%;*

- 1.31 The Business Rates Financial Model is based on a current rate 3% as advised by the council's Treasury Management team.

d) *That the expansion of Brent Cross has reached the "point of no return", as verified independently;*

- 1.32 The growth in business rates from the BXSC expansion was identified as a source of funding for the station and critical infrastructure investment because there was in effect no opportunity cost: without the infrastructure for housing there would be no BXSC expansion. In early discussions the council proposed that 100% of business rate growth was ringfenced. HMG preferred to make a capital contribution, thus the FBC is based on £97m grant, plus council borrowing to be repaid through ringfencing the local 50% of shopping centre business rates growth for 12+3 years.
- 1.33 The FBC was therefore based on the council borrowing *only after* the legal Property Development Agreement had gone unconditional and the critical infrastructure works are commenced by the shopping centre owners. These works (£300m) must be fully bonded, giving confidence that once started they, and the shopping centre, will be completed.
- 1.34 This purpose of this test is to protect the council against development not coming forward and guarantee that the business rates income would be generated to repay the borrowing. Should HMG agree to either forward fund the scheme or agree to write off any outstanding debt in 25 years the aim of this test would be met. This test should therefore be updated to reflect that BXN has been delayed and that a new funding strategy is being agreed that will meet the purpose of this test.

e) That a fixed price has been received from Network Rail for the station build;

- 1.35 The reports to the ARG Committees on 17 September and 27 November explained that Network Rail will not enter the fixed price variant for high value projects and that any contract with Network Rail will be an emerging cost contract and outlined the cost control measures that will be put in place to manage this risk.
- 1.36 The purpose of this test was to protect the council against cost overruns. This is a real concern. The council is seeking to mitigate this risk through the Revised Funding Agreement with HMG and by putting in place the cost control measures outlined to ARG on 17 September and 27 November within the contractual agreements. Subject to this Committee's approval the council will also commence an OJEU process to procure a contractor to design and build the station platforms and station / pedestrian access bridge to ensure value for money and greater cost certainty. This approach will allow the council to use a target cost contract rather than an emerging cost contract as required by Network Rail thereby allowing greater control and certainty on the output cost. Network Rail are supportive of this strategy.
- 1.37 As stated earlier, a number of sensitivities have been included in the BR model to test the impact of any costs increases from the NR emerging cost contract so that the Council and its public-sector partners understand the financial implications of cost increases over the station build period.

f) That the general fund is in a sustainable position at the point of decision.

- 1.38 The revised MTFs is also being reported to this Committee. In meeting this test, it will be necessary to demonstrate on 20 February that the BXC has nil net or positive impact on the council finances.
- 1.39 The current and proposed tests are summarised in the table below:

	Existing Financial Test for the council to enter into borrowing to pay for the station	Updated Financial test for the council to commit to the Implementation Agreement Schedule 1B works
1	A guarantee of ring-fencing (or equivalent assurance) of business rates received from HMG and CLG (100% if fully funded from business rates, 50% if partially funded from business rates and partially funded by grant);	A guarantee of either 1) forward funding investment in return for 100% of the ring-fenced local share of business rates growth or 2) ring-fencing (or equivalent assurance) of business rates received from HMG and CLG and that the RFA does not expose council to unacceptable risk. (paragraph 1.24-1.25-).
2	Confirmation that business rates will still pay back borrowing in 25 years if estimates of total business rate expansion are reduced by 40%;	If the RFA requires the council to borrow, confirmation that business rates will still pay back borrowing in 25 years if cost increase by 15% on Network Rail controllable costs. (paragraph 1.29-1.30).
3	That interest costs are capped at no more than 4.5%;	If the RFA requires the council to borrow, that interest rates are capped at no more than 4.5% (paragraph 1.31).
4	That the expansion of Brent Cross has reached the “point of no return”, as verified independently;	That an acceptable RFA is in place does not expose the council to unacceptable risk. (paragraph 1.32-1.34).
5	That a fixed price has been received from Network Rail for the station build	Noting that NR will only progress on an emerging cost contract (not fixed price), the RFA must mitigate the risk of NR cost overruns and not expose the council to unacceptable risk, noting the provisions within the Implementation Agreement approved by the Assets, Regeneration and Growth Committee on 17 September and 27 November 2018. (paragraph 1.35-1.37).
6	That the general fund is in a sustainable position at the point of decision.	That the impact on the council’s general fund is either net nil or positive (paragraph 1.38).

Minimum Revenue Provision Strategy

- 1.40 Should the confirmed funding strategy be based on council borrowing (i.e. Option 2) the Council is required to charge minimum revenue provision (MRP) on any borrowing to its revenue account. This is in accordance with the principle that all local authority capital expenditure should be financed either from capital receipts, capital grants (or other contributions) or revenue.
- 1.41 In this regard, the council proposes to use the Asset Life annuity method for charging MRP on the borrowing taken out to finance the BXT Station and associated infrastructure. The rationale for this treatment is that the economic benefits from the station will accrue over time as more people use the station and in this case the MRP increases over time. In accordance with the Regulations, the Council proposes to start charging MRP in the

financial year following that in which the station becomes operational. Based on the planned May 2022 opening date, this would mean charging MRP from 2023/24.

Referral to Full Council

- 1.42 Given the strategic importance of BXC and the scale of the investment proposed in BXT, Full Council's approval will be sought on 18 December 2018 to confirm that the council should proceed with all the BXT station work packages (the station / sidings / rail systems; new waste transfer station and infrastructure works) subject to the Policy and Resources Committee being satisfied that the Revised Funding Agreement with HM Government (HMG) ensures that the council is sufficiently protected against risks. If the Revised Funding Agreement includes a requirement for council borrowing, this would mean that P&R would need to assure itself that borrowing is repayable from ringfenced business rate growth; cashflow support is available for any interest payments before business rate growth arises; and that the council is sufficiently protected against the risk if the commercial and/or shopping developments do not go ahead. An approach to handling cost overruns will also be needed.

Delivery of BXT Works – Procurement Strategy

- 1.43 The BXT procurement and delivery strategy for each BXT work package has been approved by ARG throughout this year. These reports can be provided to the Committee on request. Amendments are now proposed to this strategy to ensure that the programme is maintained, provide greater control on resources and costs and to ensure that specialist support is correctly procured when needed. This is particularly relevant to works on the operational railway within the Rail Systems and Sidings works package.
- 1.44 The revised BXT procurement strategy is as follows:

Work Package	Original Delivery Proposal	Revised Delivery Proposal	Rationale
Rail Freight Facility	DB Cargo	DB Cargo	No change – legal agreement in place.
Waste Transfer Station	Grahams Contractor / Conway Aecom LBB /LOHAC Framework	Grahams Contractor / Conway Aecom LBB /LOHAC Framework	No change – contracts in place.
Train Operating Company (TOC) accommodation	NR	Grahams LBB Framework Contractor	This package can easily be separated from the main railway works contract and is off railway infrastructure, adjacent to the proposed sidings, and has no impact on railway infrastructure. Rationale for change is to have greater control over delivery; ensure value for money; and manage existing resources to maintain programme.
Sidings and Rail Systems	NR	NR	All significant works to the operational railway are contained within the Sidings and Rail Systems contract and it remains the case that Network Rail are best placed to deliver these works given the extent and their specialist nature alongside the complexity of working directly on the railway. No change proposed. The Implementation Agreement was reported to the ARG Committee on 17 September 2018. This explained in detail the cost risks associated with progressing the

			emerging cost contract with Network Rail and the cost control measures that will be put in place to mitigate this risk. These reports can be provided to the Committee on request.
Station Platform / station access / pedestrian bridge.	NR	OJEU Competitive tender to select design and build contractor.	<p>The station is made up of two small pre-fabricated steel buildings (ticket hall and station entrance) covered in cladding which will be pre-installed and joined by a footbridge. The buildings will be largely pre-fabricated off site and craned in to place on the railway infrastructure. The station has been designed to outline stage by Capita design team, with input from NR. This works package, which will essentially be built outside the operational railway is not as complicated as the rail system package and has no impact on railway infrastructure and is craned into place in completed sections.</p> <p>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. A Prior Information Notice (PIN) was issued to the market on 26 October and a supplier day held on 13 November to assess market interest to undertake the works. This event did generate significant market interest, and of the 38 contractors who attended the event, it is believed that approximately half have the necessary skills and experience to deliver the station under a direct contract to the council.</p>

Station Platforms and Station / Pedestrian Access Bridge OJEU Procurement

- 1.45 In addition to ensuring value for money and greater cost certainty, 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 is probably the biggest positive factor in direct engagement, as a modular solution will reduce construction timescale, and hence reduce establishment/preliminary cost.
- 1.46 This strategy will allow the Network Rail team to focus on completing the site clearance and remediation works and transition into commencing the main Sidings and Rail Systems works contract in the new year.
- 1.47 This approach is not without risk. Firstly, an Asset Protection Agreement (APA) with NR will be required for the design and construction phase, together with the associated timescales for document review. However, contrary to the original strategy, NR has confirmed 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 have already 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. These factors mitigate the risk to the programme regarding handback of the station.
- 1.48 Employing a contractor through NR would provide some level of insulation against any incidents that may occur on site. This can be mitigated by appointing an experienced contractor who is used to working on NR infrastructure and has an approved NR principal

contractor licence. By undertaking an OJEU the council can select a contractor who has completed works before, minimising the risk.

- 1.49 The majority of the station platform and station / pedestrian access bridge work package proposed will be fabricated off site away from the operational railway. The council has assembled a Client and Re Thameslink delivery team comprising professionals experienced in delivering large railway projects and used to working on the railway within Network Rail and their contractors to contract manage the station platforms and station / pedestrian access bridge contract.
- 1.50 Notwithstanding the risks outlined above, the council's delivery team considers that commencing such a competitive tender process offers 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.
- 1.51 Consequently, given that time is available in the programme and that the OJEU procurement process offers the potential for increased market competition and scope for achieving best value for money, the Committee is asked to approve 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 in Summer 2019.
- 1.52 Subject to this approval, the BXT delivery team will then, supported by the council's legal and procurement advisors, produce a detailed Procurement and Contracting strategy to ensure a compliant OJEU route-to-market in accordance with the Utility Contract Regulations 2016 and prepare the necessary tender documentation and evaluation process to the following programme:
- | | |
|---|----------------|
| • 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 |

2. REASONS FOR RECOMMENDATIONS

- 2.1 The comprehensive regeneration of Brent Cross Cricklewood is a long-standing objective of the Council, a key regeneration priority of the Mayor of London and actively supported by HM Government. The details of the scheme are set out in previous update reports to this Committee, including the report to the November 2017 meeting, which can be accessed on this link:
<http://committeepapers.barnet.gov.uk/documents/s49849/Brent%20Cross%20Cricklewood%20Update%20Report.pdf>

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The Committee could choose not to enter into the Implementation Agreement, or allocate the government grant into the capital programme as recommended, but this would render the station opening date of May 2022 unachievable, and so is not recommended.
- 3.2 The Committee could choose to continue with the existing procurement strategy which sees Network Rail deliver the station platforms and bridge. However, for the reasons set out in paragraphs 1.41-1.50, this is not recommended.
- 3.3 Other alternative options have been considered throughout the development of this Programme, and these options are summarised in previous reports to this committee and to ARG.

4. POST DECISION IMPLEMENTATION

- 4.1 The council and its advisors will continue to progress all work streams to ensure delivery of the Brent Cross regeneration proposals as outlined in this report and approved by the Assets, Regeneration and Growth Committee.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 Previous reports describe in detail the ways in which the regeneration of Brent Cross Cricklewood supports the Council's Corporate Plan 2015-20 as updated.

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

- 5.2.1 As stated in paragraphs 1.14-1.21 of this report, the council is making good progress with HM Government and other partners in developing a funding solution to support the delivery of the Thameslink station and other critical infrastructure to facilitate the regeneration of the BXC area and the delivery of the 7,500 new homes.
- 5.2.2 The requests for budget increases for BXC within the Council's capital programme in this report are in addition to those included in the Business Planning Report to this meeting.
- 5.2.3 The council has taken the approach of adding BXC expenditure to the capital programme at the point where it is committed. The increases proposed will be funded from the MHCLG grant allocated to the Council for this purpose. These additions will mean that the Council has budgeted expenditure of £92.79m against the grant amount of £97m. The GLA has also provided a grant of £2.9m to support the BXC Programme.

- 5.2.4 To date, the Council has received verbal assurances from MHCLG officials that, if a funding solution cannot be agreed and the scheme does not go ahead as planned, the MHCLG grant will not be repayable by the council. The council has been informed that the MHCLG Accounting Officer is drafting a letter to confirm that the grant funding should be used to fund works until the end of February 2019 whilst the detail of the funding solution is worked through and put in place by the end of February 2019.
- 5.2.5 The details of the funding solution and the borrowing required based on Anticipated Forecast Cost (including NR's emerging cost estimate for the sidings and rail systems) will be reported to this Committee on the 20 February 2019. This funding solution will be based on a Tax Incremental Financing arrangement utilising business rates growth arising from the regeneration of the BXC area to repay the borrowing.

Budget Monitoring

- 5.2.6 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 Acquisitions

- 5.2.7 The approved budget for land acquisition to facilitate the BXC programme in 2018/19 and future years is £37.482m split £22.355m in 2018/19 and £15.124m in 2019/20.
- 5.2.8 To date this year, £20.0m has been spent acquiring strategic sites to enable the development of the Brent Cross South area by the JVLP. These acquisitions were in accordance with the terms agreed in the PDA and Co-Operation Agreement with the BXN Partners for the acquisition of these sites as previously reported to this Committee. This cost will be recouped from the anticipated capital receipts from the sale of this land to the individual plot developers once the JVLP has provided the infrastructure to support the development of these plots.
- 5.2.9 The BXS Project Agreement provides the methodology for agreeing the Council's land value (the capital receipt), and in this regard CBRE have undertaken the necessary valuation work in respect of the signing off the inputs and assumptions to the financial model in respect of the BXS Phase Proposal. Best Consideration was confirmed by the Chief Executive on 24 November 2017.

BXC Revised Delivery Strategy

- 5.2.10 The revised delivery strategy, agreed by the council's Assets Regeneration and Growth Committee in November 2018, will require the council to forward fund procurement to deliver core critical infrastructure and land acquisition in early 2019. This will be drawn down from the council grant funding to BXN as documented in the grant agreement dated 11 July 2016. This agreement is being amended to allow these monies to be used

for this purpose and an update alongside the funding strategy will be provided to the next Committee.

Thameslink Station

- 5.2.11 An increase in the Thameslink capital budget for the remainder of FY18/19 is required so that the council can enter into the Implementation Agreement with Network Rail to deliver the Sidings and Rail Systems and proceed with the Stage 1A Site Set Up works in accordance with the Thameslink Delivery programme for the station opening in May 2022. The current budget is £70.516m. Current spend to date (including expenditure committed but not yet paid) is £43.97m. A budget increase of £50.655m for 2018/19 is required taking the total approved budget to £92.79m. This comprises accelerated spend of £23.385m contained in the council's capital programme from 2019/20 and additional expenditure of £22.27m
- 5.2.12 As stated earlier, the delivery of the Thameslink works, including land acquisitions, is contained within the council's capital programme and partly funded by the grant of £97m from the MHCLG. To date £33.6m has been received from MHCLG to fund project costs and land acquisitions. The Council is drawing down funding on a quarterly basis. The next grant claim will be submitted to MHCLG for payment in December 2018.

Brent Cross North/London

- 5.2.13 The Brent Cross Principal Development Agreement confirms that the BXN Partners are obliged to pay the Council's (and their consultants) costs in connection with this project – this covers a range of costs, including land acquisitions, fees, highway works.
- 5.2.14 The Council's recoverable costs for 2018/19 from the Brent Cross North elements totals £2.160m. This estimate has been provided to the BXL Partners.

Brent Cross South

- 5.2.15 As previously reported, the Council has agreed to provide funding of £23m to the Council's Joint Venture Limited Partnership with Argent Related (the JVLP) to provide infrastructure to facilitate the development of the southern area. This funding will be provided by way of a loan to the JVLP which will be repaid from the proceeds of the sale of development sites in the southern area by the JVLP.
- 5.2.16 It was envisaged that this funding would be provided in 2019/20 and it is therefore included in the capital programme in 2019\20 as the Strategic Infrastructure Fund. The revised delivery strategy now means that these funds will required by the JVLP in this financial year. Therefore, approval is sought to move this budget from the 2019\20 year to 2018\19.

5.3 Social Value

- 5.3.1 As indicated in sections within this report, the Brent Cross Cricklewood programme will secure wider social, economic and environmental benefits.

5.4 Legal and Constitutional References

- 5.4.1 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.
- 5.4.2 The Council's Constitution, Article 4, sets out the role and function of Full Council which as a matter of law required to take certain important decisions including approving the strategic funding of the Council upon recommendation of the Policy and Resources Committee determination of the financial strategy and approval of the capital programme.
- 5.4.1 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.
- 5.4.2 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).
- 5.4.3 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.
- 5.4.4 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, subject to obtaining all appropriate consents and approvals.
- 5.4.5 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.
- 5.4.6 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.

5.5 Risk Management

5.5.1 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 are summarised below:

5.5.2 **Programme and funding** – There is a risk that BXN does not progress or that planning dates are not achieved across the programme. This risk has been identified in previous reports and the Council is working with public sector and development partners to ensure mitigation plans are in place. The funding risk to the station project because of BXN delay has always been recognised and as detailed in this report public sector partners have been working together to agree an alternative funding strategy.

5.5.3 Failure to agree Revised Funding Agreement

- 1) A delay to agreeing the revised Funding Agreement with public sector partners will impact the station programme and will delay the planned opening date of May 2022.
- 2) A failure to agree a revised Funding Agreement would lead to further risk and uncertainty as BXT is critical to delivery of BXS. Both programmes will stall and works will stop whilst a new funding solution is found. Contractors are very likely to be stood down and resources will be deployed elsewhere. Remobilisation will take time with a 2 year delay at best. It raises the uncertainty of whether BXS and comprehensive redevelopment of BXC is delivered. There would be no delivery of homes until post end of 2023 at the earliest.

5.5.4 A number of recommendations in this report are subject to the revised funding strategy being agreed by HMG, GLA as well as Policy and Resources Committee and Full Council. The Policy and Resources Committee in July 2014 set six tests for the council to assure itself that the prudential code can be satisfied before borrowing can be undertaken. These tests will need to be reviewed to ensure they remain fit for purpose and to mitigate the intended risk in light of the new funding strategy.

5.5.5 **BXT cost overruns / insufficient business rates generated.** The scale of the BXT investment without a guaranteed income is too great for the council to bear. The council is not able to make the commitment to fund the station programme in the current climate and capital exposure to date in relation to land assembly without confirmation that the business rates will be delivered. To mitigate and manage this risk, the two funding solutions proposed in this report seek to ensure 1) that any borrowing is repayable from ringfenced business rate growth; 2) provision of cashflow support for any interest payments before business rate growth is available; 3) ensure that the council does not

bear the risk if the commercial and/or retail developments do not go ahead.

5.5.6 Thameslink delivery costs – as with all major programmes there is the risk that costs will increase during programme delivery. The council is already undertaking an independent review of the Network Rail cost estimate and has reviewed the procurement strategy as set out in paragraph 1.41-1.50 of this report. All emerging cost contracts entered into will require strong contract management to ensure all costs incurred are reasonable. As part of the IA the council will have open book access to all of Network Rail's financial information relating to invoiced costs incurred on the programme. This will extend to Network Rail contractors where an emerging cost contract is in place. As referred to in the report to ARG in November 2018, the council also has the right (subject to notice and personal safety) to access the site and attend meetings. As referred to in paragraph 5.2.4 the Council has received verbal assurances from MHCLG officials that if a funding solution cannot be agreed and the scheme does not go ahead as planned the MHCLG grant will not be repayable by the council and that milestone requirements have been met as per the funding agreement

5.5.7 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. The challenge to NR will need to operate at several levels, including:

- a. A full time site presence that stays abreast of issues that arise on site, and monitors the detail and impact of any events, or failure to meet programme milestones, quality standards etc. The site team/person will also systematically log these events/issues and share this information with NR.
- b. Whilst it will always be difficult to isolate costs associated with NR/Contractor failure, from genuine cost, it is important that NR are discouraged from passing on contractor valuations without themselves challenging whether a deduction should be made to take account of notified failures.
- c. Attendance at key NR meetings. This is in addition to the role set out in (a), targeting any issues which may not have been picked up by the site based teams, but for the same purpose as (1).
- d. A strong commercial challenge that scrutinises and interrogates any unexpected costs which emerge during the pre-invoice (valuation) process, and repeats this when the main invoices are submitted.

5.5.8 Station Delivery Date – As reported to Committee in September, there is the risk – even with appropriate funding in place - 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. Railway possessions are already booked. 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.

5.5.9 Residential Delivery There is a risk that further delays to the BXN development will lead to uncertainty for residents and business owners who are being affected by the development either through relocation or disruption from construction activities. This is being mitigated through many communication activities and resident steering groups that have been setup specifically to keep affected parties up to date with the latest programme dates.

5.5.10 Economic – There is a risk that the prevailing economic position for the traditional retail sector will continue. This could result in reduced demand for retail space and administration to existing retailers. To mitigate this the BXS development partners are exploring a diversification of offer for BXS.

5.5.11 Planning – There is a risk that the BXC Partners do not meet the timescales established to secure the revised delivery strategy. To mitigate this all the BXC Partners are working to March submission date to ensure all parts of the scheme can be delivered to ensure comprehensive regeneration in its entirety.

5.6 Equalities and Diversity

5.6.1 As previously reported, the Development Proposals support achievement of the council's Strategic Equalities Objective.

5.6.2 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.

5.7 Corporate Parenting

5.7.1 None in the context of this report.

5.8 Consultation and Engagement

Programme wide

5.8.1 A detailed update on consultation and engagement was provided to the ARG committee on 27 November 2018.

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

6.0 BACKGROUND PAPERS

- 6.1 Policy and Resources Committee 17 May 2016 Brent Cross Funding
<http://barnet.moderngov.co.uk/documents/g7860/Public%20reports%20pack%2021st-Jul-2014%2019.00%20Policy%20and%20Resources%20Committee.pdf?T=10>
- 6.2 Assets, Regeneration and Growth Committee, 17 March 2016, item 14, Brent Cross Cricklewood Compulsory Purchase Order (No.3),
<https://barnetintranet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=8312&Ver=4>
- 6.3 Assets, Regeneration and Growth Committee, 17 March 2016, item 16, Brent Cross Cricklewood
<https://barnetintranet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=8312&Ver=4>
- 6.4 Policy and Resources Committee 17 May 2016 Brent Cross Funding
<http://committeepapers.barnet.gov.uk/documents/b27688/Brent%20Cross%20funding%20strategy%2017th-May%2016%2019.00%20Policy%20and%20Resources%20Committee.pdf?T=9>
- 6.5 Assets, Regeneration and Growth Committee, 24 April 2017, Brent Cross Cricklewood Update Report
<https://barnetintranet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=8641&Ver=4>
- 6.6 Assets, Regeneration and Growth Committee, 24 July 2017, Brent Cross Cricklewood Update
<https://barnetintranet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=9337&Ver=4>
- 6.7 Assets, Regeneration and Growth Committee, 4 September 2017, Brent Cross Cricklewood update report,
<https://barnetintranet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=9080&Ver=4>
- 6.8 Assets, Regeneration and Growth Committee, 27th November 2017, Brent Cross Cricklewood Update Report,
<https://barnetintranet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=9435&Ver=4>
- 6.9 Assets, Regeneration and Growth Committee, 12th March 2018, Brent Cross Cricklewood Update Report,
<https://barnetintranet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=9083&Ver=4>
- 6.10 Assets, Regeneration and Growth Committee, 14th June 2018, Brent Cross Cricklewood Update Report,
<https://barnetintranet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=9480&Ver=4>
- 6.11 Assets, Regeneration and Growth Committee, 17th September 2018, Brent Cross Cricklewood Update Report,
<https://barnetintranet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=9764&Ver=4>

- 6.12 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>