



CHIEF OFFICER IN CONSULTATION WITH COMMITTEE CHAIRMAN DELEGATED POWERS REPORT 20 December 2018

Title	Brent Cross Cricklewood - Brent Cross West Station - Implementation Agreement Rail Systems and Sidings –
Report of	Deputy Chief Executive in consultation with the Chairman of the Asset, Regeneration and Growth Committee
Wards	Childs Hill, Golders Green and West Hendon
Status	Public with separate exempt report
Enclosures	No
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Summary

This report authorises entering into the Main Implementation Agreement with Network Rail ("the IA") and to commission the site set up works as set out in Schedule 3 Part 1 of the Agreement as approved by the Assets, Regeneration and Growth (ARG) Committee on 27 November 2018, Policy and Resources (P&R) on 11 December and Full Council on 18 December and to commence works to maintain the programme for construction of the South Sidings and overall Rail Systems and Sidings programme and to meet the Brent Cross West Station opening date of May 2022. The Schedule 3 Part 1 works were referred to as Schedule 1A works in the P&R and Council report. The main works (schedule 3 Part 2) will only be instructed following approval of the Revised Funding Strategy by the Policy and Resources Committee on 20 February 2018.

Decisions

That following agreement by the Deputy Chief Executive in consultation with the Chairman of the Asset, Regeneration and Growth Committee, the Council now proceeds to enter into the Main Implementation Agreement with Network Rail to deliver the Rail Systems and Sidings construction work and commission site set up works as set out in Schedule 3 (Part 1) of that agreement.

1. WHY THIS REPORT IS NEEDED

- 1.1 This report is required to authorise entering into the Main Implementation Agreement (IA) commencement of the establishment of site facilities and early Rail Systems and Sidings construction works (as set out in Schedule 3 Part 1).
- 1.2 These works are required to maintain the programme for the construction of the new south sidings and overall Rail Systems and Sidings programme, anticipated to commence in March 2019, to meet the Brent Cross West Station opening date of May 2022.
- 1.3 The comprehensive regeneration of the BXC area is a long-standing council objective.
- 1.4 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.
- 1.5 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.
- 1.6 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.

- 1.7 In respect of the delivery of the Brent Cross West Thameslink station, the GRIP 4 design sign off by Network Rail was received in February 2018, which satisfied the conditions to release the HM Government Grant Funding for the project. On 15 May 2018, the CPO3 Order to facilitate the land needed to deliver the Thameslink Station and associated infrastructure was also confirmed.
- 1.8 The Council has entered into various agreements with Network Rail to support the delivery of the new station by 2022. The specific agreements relating to the Rail Systems and Sidings works are:
 - Design Services Agreement (DSA) 1 entered in November 2014 to undertake GRIP 3 Option Selection (excluding Approval in Principle);
 - Design Services Agreement (DSA) 2 entered in March 2017 to undertake GRIP 4 Approval in Principle (AiP) design;
 - Design Services Agreement (DSA) 2 variation entered in August 2018 to commence GRIP 5 Detailed Design;
 - Implementation Agreement entered in July 2018 to undertake the necessary early works to prepare the site in anticipation of the main works;
 - Implementation Agreement entered in November 2018 to procure the long lead materials.
- 1.9 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.
- 1.10 On 27 November 2018 the Assets, Regeneration and Growth Committee delegated to the Deputy Chief Executive in consultation with the Chairman of the Asset, Regeneration and Growth Committee, the Council to enter into the Main Implementation Agreement with Network Rail to deliver the Rail Systems and Sidings construction work and commission site set up works as set out in Schedule 3 (Part 1) of that agreement. This was subsequently approved by Policy and Resources Committee on 11 December 2018 and Full Council on 18 December 2018. In these reports the Schedule 3 Part 1 works were referred to as the Part 1A works.
- 1.11 The Sidings and Rail Systems work package is separated into two work schedules: Part 1 – Site Set up which NR needs to be let by 15 January 2019 to their subcontractor; and Part 2 main works to the railway which needs to be commissioned by 21 February 2019 to meet the key rail possessions already booked for Easter and November/Christmas 2019.
- 1.12 The costs of the Part 1 works (attached at schedule 3) can be contained within the already agreed £97m grant from HMG alongside existing contractual commitments and the Part 2 works will need to have the HMG Revised Funding Agreement in place prior to commissioning as approved by the Policy and Resources Committee on 11 December 2018. It is intended

that this Agreement is reported to the next Policy and Resources Committee in February 2018.

- 1.13 The IA is now agreed and 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.
- 1.14 A detailed account of the Implementation Agreement was set out in the reports to the Assets, Regeneration and Growth Committee on 17 September and 27 November 2018:

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>

Assets, Regeneration and Growth Committee, 27th November 2018,
Brent Cross Cricklewood Update Report,
<https://barnet.moderngov.co.uk/documents/s49849/Brent%20Cross%20Cricklewood%20Update%20Report.pdf>

- 1.15 The required planning consents for the sidings work packages were issued on 14 December 2018.
- 1.16 The scope of the works subject to Main Implementation Agreement Schedule 3 Part 1 is as follows:
- Continuation of GRIP 5 detailed designs, and Form B and Approved for Construction drawings, for the Rail Systems and Sidings Works, including systems engineering and system safety (CSM/Interoperability) functions, as more particularly described in paragraphs 2.1 and 2.3 of Schedule 3B;
 - Procurement of long-lead works items and any Key Sub-contractors (subject to prior written approval of the Customer);
 - Site set-up, including establishment of site security, welfare facilities, access points, storage compounds, parking, etc. as necessary to allow the site to function;
 - Site surveys and correlation of existing systems;
 - Construction of temporary roads; and
 - Commencement of early Rail Systems and Sidings construction works.
- 1.17 The cost of the Schedule 3 Part 1 works is £15.89m as set out in the resources section.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The comprehensive regeneration of Brent Cross Cricklewood is a long-standing objective of the Council and a key regeneration priority of the Mayor of London. The details of the scheme are set out in previous reports to the Assets, Regeneration and Growth Committee.
- 2.2 This Main Implementation Agreement Schedule 3 Part 1 - Rail Systems and Sidings Early Works is required to ensure that necessary site establishment, continuation of detailed design and any early planned construction works are undertaken prior to the award of the Main Implementation Agreement Schedule 3 Part 2 which is anticipated in February 2019. Delays to the award of this agreement will impact the booked possessions throughout 2019 which will delay the commissioning of the South Sidings which will have a subsequent delay to the opening date of Brent Cross West Station in May 2022.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 There are no alternative options in this instance. This work is to be undertaken by Network Rail in line with previous decisions of by the Assets, Regeneration and Growth Committee.

4. POST DECISION IMPLEMENTATION

- 4.1 Once the decision has been approved, the council will enter into Implementation Agreement with Network Rail and commission the site set up works.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The reports to the Assets, Regeneration and Growth Committee describe in detail the ways in which the regeneration of Brent Cross Cricklewood supports the Council's Corporate Plan 2015-20 as updated. The reports relevant to this decision are included within the background documents.

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

- 5.2.1 The current total approved Capital Budget for Thameslink is £92.79m as approved on Policy & Resources Committee in December 2018. Spend at the end of November 2018 is £39.058m.
- 5.2.2 Of the £92.79m budget, £63.84m has been committed to external parties, leaving an overall available budget of £28.95m as at 12 December 2018.
- 5.2.3 The delivery of the Thameslink works, including land acquisitions, is contained within the council's capital programme and partly funded by grant of £97m from the Ministry of Housing, Communities and Local Government (MHCLG).

To date £33.6m has been received from MHCLG to fund project costs and land acquisitions. Following the completion of the GRIP4 and satisfaction of the conditions attached to the Grant Funding, it has been agreed that the Council will drawdown funding on a quarterly basis. The next invoice is currently being prepared.

- 5.2.4 Under the terms of the Implementation Agreement, Network Rail will attend monthly project development meetings and provide a monthly cost report to ensure that the contract is monitored correctly and to ensure value for money. Re will maintain a project assurance role to ensure that the project is carried out within the approved budget and within the agreed timescales.
- 5.2.5 As referenced in the Policy and Resources Committee Report (Brent Cross Cricklewood Funding and Delivery Strategy Report paragraph 5.5.3), 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's 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.
- 5.2.6 The total cost estimate of the Part 1 works is £15.89m. This is within the approved budget as set out in paragraph 5.2.2 and council costs will be recovered through the drawdown of the DCLG grant funding.
- 5.2.7 The Implementation Agreement can be terminated within a three month notice period if the costs are projected to exceed 10% of budget or the programme is likely to extend by more than twelve months. Since the report to Assets, Regeneration and Growth Committee on 27th November 2018 the following key changes to the Implementation Agreement have been made:
 - 5.2.7.1 Network Rail has assumed responsibility for all aspects of design;
 - 5.2.7.2 The agreement no longer makes Network Rail responsible for the delivery of the TOC accommodation, station, bridge and east/west connections;
 - 5.2.7.3 The council is responsible for any long term Network Rail revenue costs arising out of a planning requirement that is not anticipated at the date of the agreement – none is expected.

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 power to enter into various arrangements to progress the redevelopment of the Brent Cross Cricklewood scheme is contained in the

general power of competence under Section 1 of Chapter 1 of the Localism Act 2011. 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 restrictions contained in legislation.

- 5.4.2 The Council's Constitution -Article 4- sets out the role and function of Full Council which as a matter of law is required to take certain important decisions including approving the strategic funding of the Council upon recommendation of the Policy and Resources Committee, the determination of the financial strategy and the approval of the Council's capital programme.
- 5.4.3 The Local Government (Contracts) Act 1997 provides an express general power for local authorities to enter into contracts with third parties.
- 5.4.4 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.
- 5.4.5 On 27 November 2018, Assets Regeneration and Growth Committee approved that the council enters into the Implementation Agreement with Network Rail to deliver the sidings and rail systems subject to the funding strategy being approved by Full Council on 18 December following consideration by Policy and Resources Committee on 11 December; and delegate authority to the Deputy Chief Executive in consultation with the Chairman of this Committee and the Chairman of Policy and Resources Committee to finalise the terms and enter into the Implementation Agreement with Network Rail.
- 5.4.6 Under paragraph 8.1 of Contract Procedure Rules acceptance of contract variations must be in accordance with Article 10 Table B of the Constitution, and in all cases is subject to budget provision, a compliant procurement process, and confirmation of acceptable financial status of the contractor.
- 5.4.7 The Council's Contract Procedure Rules in paragraph 4.2 states that any procurement which has not been authorised in the Procurement Forward Plan must be authorised in accordance with the Article 10 of the Constitution, Table B. The Table states that variations or extensions of contracts within budget over £500,000 is via the relevant Thematic Committee. The Assets Regeneration Committee of 27 November delegated authority to the Deputy Chief Executive in consultation with the Chairman of the Committee to agree and take all necessary steps to enter into the Design Services Agreement with Network Rail to continue the GRIP 5 design and early works. All necessary steps include agreeing amendments to achieve the GRIP 5 design and early works. The Chairman of Assets Regeneration Committee has been consulted.

5.5 Risk Management

- 5.5.1 A risk register has been prepared and will be regularly updated. The main risks are reported to the Assets, Regeneration and Growth Committee and Policy and Resources Committee.

5.5.2 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.

5.5.3 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 the Report to the Policy and Resources Committee 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

5.5.4 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.
- 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.

5.5.5 **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.

5.5.6 The risk of cost and time overruns will be actively managed through regular meetings with Network Rail and monthly reporting reports so that the contract can be monitored to ensure value for money and delivered to agreed timescales. Updates will be provided to the Brent Cross Cricklewood Governance Board.

5.6 **Equalities and Diversity**

5.6.1 The 2010 Equality Act which outlines the provisions of the Public Sector Equality Duty (PSED), requires all Local Authorities to pay due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- Advance equality of opportunity between people from different groups;
- Foster good relations between people from different groups

5.6.2 This places a legal obligation on the Council to pay due regard to equalities in an appropriate and proportionate manner and to take account of how the Council's decisions might impact on different groups across the borough including those identified in equality legislation as protected characteristics, namely: Age, disability, gender, gender reassignment, marriage, civil partnership, pregnancy and maternity, sexual orientation and religion or belief.

5.6.3 Equality and diversity issues are a mandatory consideration in the decision-making of the Council. This requires elected Members to satisfy themselves that equality considerations are integrated into day to day business and that

all proposals put to committees have properly taken into consideration what impact, if any, there is on any protected group and what mitigating factors can be put in train.

5.6.4 It is important to highlight that Brent Cross Cricklewood 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. The scheme proposals emphasise the promotion of health and wellbeing and reducing dependency will be ingrained in the place.

5.6.5 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.

5.6.6 The equalities implications will continue to be regularly reviewed and updated during the life of the project.

5.7 Consultation and Engagement

5.7.1 A detailed report is provided in the Assets, Regeneration and Growth Committee, 27th November 2018, Brent Cross Cricklewood Update Report <http://committeepapers.barnet.gov.uk/documents/s49849/Brent%20Cross%20Cricklewood%20Update%20Report.pdf>

6. BACKGROUND PAPERS

6.1.1 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>

6.1.2 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>

6.1.3 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>

6.1.4 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>

6.1.5 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>

- 6.1.6 Assets, Regeneration and Growth Committee, 27th September 2018, Brent Cross Cricklewood Update Report,
<https://barnet.moderngov.co.uk/documents/s49849/Brent%20Cross%20Cricklewood%20Update%20Report.pdf>
- 6.1.7 Policy and Resources Committee, 11th December 2018, Brent Cross Cricklewood Funding and Delivery Strategy Report,
<https://barnet.moderngov.co.uk/documents/s50136/Brent%20Cross%20Cricklewood%20Funding%20and%20Delivery%20Strategy%20Report.pdf>
- 6.1.8 Council, 18 December 2018 Brent Cross Cricklewood Funding and Delivery Strategy Report,
<http://barnet.moderngov.co.uk/documents/s50207/Referral%20from%20Policy%20Resources%20Committee%20to%20Full%20Council%20-%20BCX.pdf>

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.

8.1 OFFICER'S DECISION

I authorise that the Council now proceeds to enter into the Main Implementation Agreement with Network Rail to deliver the Rail Systems and Sidings construction work and commission site set up works as set out in Schedule 3 (Part 1~~2~~) of that agreement.

Chairman: Cllr Daniel Thomas

Has been consulted

Signed (via email)

Date

Chief Officer: Cath Shaw, Deputy Chief Executive

Decision maker having taken into account the views of the Chairman

Signed



Date 20.12.18