



Housing and Growth Committee

26 November 2019

Title	Brent Cross Cricklewood Update Report
Report of	Councillor Richard Cornelius
Wards	Childs Hill, Golders Green and West Hendon
Status	Public
Urgent	No
Key	No
Enclosures	Appendix 1: BXS Business Plan Executive Summary
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Summary

This report provides a progress update on the comprehensive regeneration of the Brent Cross Cricklewood (BXC) programme since the last Committee meeting on 16 September 2019. It seeks the approval on the update changes to the Brent Cross South (BXS) Business Plan and provides an update on the emerging revised Phase Proposal alongside the proposed Homes England Loan (HBF) Facility. The report seeks authority for the Chief Executive to determine best consideration and to re-confirm that the value be re-invested in BXS to secure a revenue stream. It also provides an update on the Brent Cross Thameslink (BXT) delivery progress, most notably the contract award to Volker Fitzpatrick in respect of the Station Platforms and Pedestrian/Station Access Bridge which was approved by the Policy and Resources Committee on 3 October 2019.

Officers Recommendations

That the Committee:

- 1) Notes the progress update across the scheme since the last report to the committee on 16 September 2019.**
- 2) Notes that the Policy and Resources Committee on 3 October 2019**
 - a) Approved the appointment of Volker Fitzpatrick as the preferred bidder to design, build and handback the Brent Cross West Station and Vinci Taylor Woodrow as reserve bidder; and**
 - b) Authorised Deputy Chief Executive in consultation with the Chairman of this Committee to finalise and enter into the NEC contract to deliver the Brent Cross West Station with the preferred bidder (or with the reserve bidder should it prove not to be possible to complete contracts with the preferred bidder).**
- 3) Approves the amendments to the Brent Cross South (BXS) Business Plan Executive Summary and delegates authority to the Chief Executive in consultation with the Chairman of this Committee to finalise and agree the BXS Business Plan main report in accordance with paragraphs 1.8-1.24 of this report.**
- 4) Notes that a revised First Phase Proposal is being developed to reflect the update to the Business Plan as summarised in Appendix 1 and authorises the Chief Executive to determine that the Best Consideration requirement has been met following:**
 - a) approval of the Business Plan by this Committee;**
 - b) completion of the Phase Project Valuer (PPV) review and on receipt of a formal letter on Best Consideration from the PPV Valuer at a minimum of £10.5m; and**
 - c) confirmation that the tests set out in paragraph 1.31 of this report will be met.**
- 5) Re-confirm that the council Land Value be re-invested in BXS to secure a revenue stream and authorise Officers to explore options for securing this investment for consideration by this Committee in due course.**
- 6) Authorise the Deputy Chief Executive in consultation with the Chairman of the Committee to update and make any consequential changes as may reasonably be required to the BXS legal documentation in light of the updated Business Plan and revised Phase Proposal and Homes England Loan Facility Agreement.**

1. WHY THIS REPORT IS NEEDED

1.1 This report provides the quarterly update on progress since the last Committee meeting on 16 September 2019. At that meeting, the Committee:

- Approved and delegated to the Deputy Chief Executive to provide the necessary approvals on behalf of the council as freeholder to assign the lease and so Argent Related and FI Real Estate have agreed terms to complete the transaction to acquire the vacant Toys R Us site.
- Confirmed the appointment of DP9 as planning advisors; New Steer as CPO advisors; the extension of Conway Aecom scope of works to include the temporary access road (paragraph 1.13) and to procure the A-Site document management system for use across the programme and delegates to the Deputy Chief Executive to agree the terms of those appointments and any other appointments as necessary within the agreed budget forecast to meet the current delivery programme for the Phase 1AN infrastructure.
- Notes that the West London Orbital Design Integration Study has now concluded and has identified two possible options for developing an interchange arrangement for the WLO within the Brent Cross West Station; and approves that a further £50k is provided to undertake the necessary further design works to confirm feasibility and identify a single option to be incorporated within the GRIP5 station detailed design stage once the contractor is on board.

1.2 The link to the Committee report is here:

<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=9929&Ver=4>

BXC Programme Wide Progress Update

1.3 The Committee is asked to note the following programme wide progress update;

- There has been no further update on the proposals for Brent Cross North (BXN).
- Demolitions within BXS have now started. BXS are working to place the first significant infrastructure contract in January to commence infrastructure works by mid-2020 and enable plot development to commence on Plot 12 in early 2021.



Photo of demolition works – Former Rosa Freedman Centre

- BXS is now concluding the negotiations with Homes England to secure funding for use in delivering both physical and social infrastructure, land acquisition and section 106 costs to accelerate development as set out in the June report. The intention is that the Homes Building Fund Loan Facility (HBF) will be in place by the end of year in order to place the first significant infrastructure contract in January 2020. Homes England (HE) require that both the BXS Business Plan and the revised Phase Proposal are updated and approved by the council and HE to reflect the revised funding and delivery strategy as a result of BXN deferral prior to draw down. This includes confirmation by CBRE and approval by the council that the Best Consideration requirement has been met in order for the council to confirm disposal of its land required to facilitate the revised phase proposal in accordance with the BXS legal documentation. Homes England and MHCLG have now approved the loan subject to final approval by the HM Treasury, which is anticipated in December. The Loan Facility Agreement (LFA) and the Direct Agreement between the council and HE are being finalised in parallel.
- The BXS Business Plan is now updated and the proposed changes are reported to this Committee for approval and authorises the delegation to the Chief Executive in consultation with the Chairman of this Committee to finalise the BXS Business Plan main report in accordance with paragraphs 1.8 of this report. The Executive Summary with proposed changes is attached at Appendix 1.
- The revised Phase Proposal is now being finalised. CBRE have been instructed by the council as Phase Project Valuer (PPV) to advise the council in accordance with the Project Agreement. Following 1) completion of this review; 2) receipt of a formal letter on Best Consideration from the PPV Valuer and 3) confirmation that the tests set out in paragraph 1.31 of this report have been met, the Committee is asked to authorise the Chief Executive in consultation with the Chairman of this Committee to review and confirm that the best consideration requirement has been met.

- The council is continuing to progress the critical infrastructure workstreams to deliver the highway improvements to the junctions of Claremont Road / Cricklewood Lane and Cricklewood Lane / A5 Edgware Road (known as the Southern Junctions), as well as part 1 of the Whitefield Estate replacement homes which will be built on Plots 53 and 54 on Brent Terrace. The novation of the L&Q Funding Agreement from BXN to the council was completed on 12 November 2019.
- On 3 October 2019, the Policy and Resources Committee approved the appointment of Volker Fitzpatrick as the preferred bidder to design, build and handback the Brent Cross West Station and Vinci Taylor Woodrow as reserve bidder; and authorised the Deputy Chief Executive in consultation with the Chairman of this Committee to finalise and enter into the NEC contract to deliver the Brent Cross West Station with the preferred bidder (or with the reserve bidder should it prove not to be possible to complete contracts with the preferred bidder). The contract is due to be entered into shortly with Volker Fitzpatrick.
- Further additional design works are being undertaken to confirm feasibility and identify a single option to enable passive provision for an interchange arrangement for the WLO within the Brent Cross West Station for incorporation within the GRIP5 station detailed design stage.
- The Train Operating Company (TOC) Building is now complete. However, the TOC operator GTR has delayed relocating to the building until mid December once the new train timetable is in place. This, coupled with the recent notification from Network Rail that the required 72 hour possessions required in 2021 (to slew the mainline rail tracks to create the space for the new station platforms) are no longer available, has significant impacts on the BXT and BXS programme. The implications are currently being worked through with DfT, NR (and Amey), the TOC operators as well as BXS to develop a revised integrated programme that will have rail industry wide support. An update will be provided to the Committee in January 2020. This delay will have programme and cost implications for Thameslink and BXS projects, which need to be worked through with the public sector partners alongside Network Rail and Argent Related.
- In respect of the waste programme, North London Waste Authority (NLWA) and London Energy Limited (LEL) have now signed off the detailed design to commence with the main works contract. However, as reported to the Committee previously, BXT reviewing the procurement strategy. In accordance with existing delegations, this will be reported to the Chief Executive in December for approval in consultation with the Chairman of the Committee and an updated provided to the next Committee.

Updates to the Brent Cross South Business Plan and Phase Proposal approved in 2017

- 1.4 The south side legal documentation (which includes the Project Agreement, Limited Partnership Agreement, Shareholder Agreement and associated documentation) was completed on 11 July 2016, and the Brent Cross South (BXS) Joint Venture Limited Partnership (JVLP) formally created.
- 1.5 The Project Agreement and Shareholder Agreement dated 11 July 2016 provide the framework for bringing forward BXS. The report to the Committee dated 17 March 2016 summarises the joint venture structure and legal framework arrangements.

<https://barnet.moderngov.co.uk/documents/g8312/Public%20reports%20pack%2017th-Mar-2016%2019.00%20Housing%20and%20Growth%20Committee.pdf?T=10>

- 1.6 This framework includes a requirement for a Business Plan to be reviewed annually, describing the actions required to meet the BXS vision shared by the parties, and through this route guide the activity, roles, responsibilities and obligations of the parties. The Business Plan is a live document capable of being reviewed as required. The Committee approved the Business Plan in July 2017.

<https://barnet.moderngov.co.uk/documents/g9337/Public%20reports%20pack%2024th-Jul-2017%2019.00%20Assets%20Regeneration%20and%20Growth%20Committee.pdf?T=1>

- 1.7 The Committee was asked to note that any future changes to the Business Plan will need to be approved by the council acting as shareholder in the General Partner. The Business Plan was not updated in 2018 due to the need to work through the implications of the decision by Hammerson and Aberdeen Standard to defer the BXN scheme in July 2018 and formally agree the revised funding and delivery strategy.

- 1.8 The BXS Business Plan has now been updated to

- a) reflect the revised delivery strategy and resequencing of works;
 - consequential changes resulting from the deferral by BXN;
 - scheme development in relation to the station and evolution of the BXS masterplan;
 - proposed Homes Building Fund loan facility;
 - progress on securing reserved matters planning consent and land assembly reflecting changes in relation the confirmed CPO's and third party land;
 - current market conditions including the negotiations with L&Q in respect of Plot 12 and relocation of Part 2 Whitefield Estate;
- b) Provide greater emphasis on Health and Wellbeing
- c) Respond to re-evaluation of local transport infrastructure to meet needs of current and future residents.
- d) Confirm infrastructure utility partners
- e) Provide more detail on future development uses within the town centre.

- 1.9 The Executive Summary is attached at appendix 1. The key areas of change are as follows:

a) BXC Revised Funding and Delivery Strategy

- 1.10 The introduction to the Business Plan notes that the most significant impact to the project has arisen though the delays and deferral of the redevelopment of BXN. In particular, BXN are no longer delivering the c£350m of infrastructure improvements, some of which are critical to BXS; and BXS can no longer leverage the place making and regeneration impact that the investment in BXN would have made to the surrounding area.
- 1.11 As a direct consequence, the Business Plan has been updated to reflect the re-sequencing of infrastructure and plot development, the First Phase of BXS (not to be confused with the Planning Consent Phase 1) has been revised and will now be centred in Market Quarter around Neighbourhood Square and the High Street connection to Station Square to take advantage of the context created by the first tranche of Strategic Infrastructure. The First Phase will also respond to the following drivers:

- Temporary open space to be provided on Plot 11
- It is to be residential led;
- To maximise the number of markets that the development can provide for, Build to Rent is to be included alongside Market Sales;
- 110 Whitefield Estate replacement homes to be relocated to Plot 12;
- New affordable homes will be provided in Plots within s73 planning Phases 2 and beyond, in accordance with the requirements of the s106 Agreement;
- A commercial office building;
- Student Accommodation;

1.12 It also advises that the Phase Unconditional Date to follow as soon as practical after the Project Unconditional Date (if not simultaneous).

b) Greater emphasis on the Health and Well-being

- 1.13 The Business Plan also places greater emphasis on health and wellbeing. It confirms the comprehensive focus on health and wellbeing as being a key driver in the design and development of BXS. The aim is to create a place that encourages healthy lifestyles and enables people to thrive in their everyday lives. In addition to physical activity and opportunities for play, this initiative will also focus on mental health and the benefits of regular social interaction and community activities.
- 1.14 In particular, it confirms that an emphasis on health and wellness of the individual will be at heart of the town centre.
- 1.15 The Business Plan envisages that large scale sports and play facilities will encourage and facilitate active participation from residents and visitors alike, setting a tone for community participation across the development. Play, sport and other uses that support this priority will permeate the entire development, through public realm design, leisure facilities, retail strategy, partners selection, enlivenment etc. The purpose is to encourage participation and healthy lifestyles at all levels as part of the DNA of the place, making the most of community facilities as attractors and enablers of a healthy lifestyle.

c) Acknowledges the need to re-evaluate local transport infrastructure which does not meet the needs of current or future residents or occupiers

- 1.16 The BXS site is geographically well connected, but the Business Plan acknowledges that under the assumptions within the existing consent, the local transport infrastructure as currently exists, does not meet the needs of either current or future residents or occupiers. This is now being re-evaluated in partnership with LBB and TFL given that there have been substantial shifts since consent was last updated (such as the new station being delivered 10 years earlier than previously planned).
- 1.17 A key part of the vision for BXS is that the development will not need to be dominated by the car, and from the early stages of delivery there will be access to great public transport connections and choice of travel options.
- 1.18 The existing planning consent promotes the goal of providing sustainable modes of transport, with a focus on good quality cycle and pedestrian linkages. However, experience from other schemes indicates that market demand for residential parking has fallen since

consent was granted. Conversely, it is considered that there may be under-provision of parking in the early phases to meet the market demands of commercial office space, as BXS is establishing itself as a new office location.

d) Update on selection of Utility Infrastructure Partners

- 1.19 BXS has selected Metropolitan as its partner for the utility network ownership; Metropolitan's regulated businesses will own, operate and maintain all the electrical and gas networks and is currently pursuing the water supply and drainage networks also (subject to discussions with the regulator). BXS has also selected its energy partner Vattenfall, who will operate under a 40+ year concession to deliver low-carbon heat, with a target to deliver zero carbon heat within a generation.

e) Update on Development Uses

Student Housing

- 1.20 Because of its good connectivity, BXS will be an attractive location for student housing. With c.300,000 full time students across 61 university campuses in Greater London, the market is mature and robust, and student housing is a complementary use that sits well alongside the core residential offering, aimed primarily at a younger demographic and bringing day round animation. Dedicated student housing at BXS could also relieve pressure on the private rented sector in the borough more generally.

Later Living

- 1.21 The over 65 demographic accounts for 22% of the UK population and yet retirement properties in the UK equate to just 2% of the UK housing stock. This position is even more acute in Barnet, with predictions that the number of people aged 65+ will increase by 33% over the next 10 years – one of the largest increases in elderly residents in all London boroughs. This pent up demand has not gone unnoticed by the market, with several major entrants coming into the Later Living sector in recent years. Like student accommodation, Later Living will generate activity and help to establish critical mass alongside the core residential offering. It will also support a multi-generational resident profile for BXS that will add to its diversity and social inclusion.

Retail and Leisure

- 1.22 The Business Plan includes further objectives for the retail and leisure offer at BXS:
- Become a destination to a wider London audience beyond the immediate community;
 - Provide an offer which responds to gaps in the existing market, particularly around the Food & Beverage offer;
 - Support a forward thinking and innovative approach to an evolving retail market, pioneering future trends in retailing;
 - Drive value growth; and
 - Support and reinforce health and wellbeing initiatives wherever possible.
- 1.23 The area to the north of BXS already has a significant retail offer with the existing Brent Cross Shopping Centre. The retail and leisure offer at BXS will complement the Brent Cross Shopping Centre, in a way that adds to the overarching attractiveness of the area as a destination both for local people and for visitors from further afield. Whilst the re-development plans for the Shopping Centre have been delayed and are under review, the proposed retail offer in BXS will stand alone in its own right and will be a key component of the scheme for both the local community and visitors.

- 1.24 Within the initial phases of the development, a temporary enlivenment strategy will be required to encourage short term uses to provide local amenity and to generate interest and change perceptions of the area.

First Phase Proposal

- 1.25 A revised Phase Proposal is being developed in parallel by the BXS JVLP. CBRE is instructed as Phase Proposal Valuer (PPV) to review the BXS financial model and advise the council on the future council's land contribution and best consideration in accordance with Section 233 of the Town and Country Planning Act (TCPA) 1990 and the Project Agreement. A summary of this process is set out in the report to this Committee in March 2016.

<https://barnet.moderngov.co.uk/documents/g8312/Public%20reports%20pack%2017th-Mar-2016%2019.00%20Housing%20and%20Growth%20Committee.pdf?T=10>

- 1.26 In line with the updated Business Plan (subject to the approval of this Committee) and in accordance with the Project Agreement, BXS JVLP will shortly submit to the council the revised First Phase Proposal (FPP) setting out the details of the proposed development within the BXS revised first phase, establishing the floorspace, uses, infrastructure and public realm and timetable for development as well as the council's potential entitlement to land value. Again, this is a direct response to the updated funding and delivery strategy as result of BXN's deferral and resequencing of infrastructure works as set out in paragraph 1.10 above.
- 1.27 As indicated by the amendments to the BXS Business Plan, the revised First Phase of BXS will now centre upon Market Quarter around Neighbourhood Square and the High Street connection to Station Square to take advantage of the context created by the first tranche of Strategic Infrastructure. The existing First Phase Proposal approved in 2017 is no longer deliverable due to the revised funding and delivery strategy and re-sequencing of works including availability of plots. There are plots on the south side, north of the High Street, within the 2017 first phase that need to be safeguarded for a period of time to deliver the BXN scheme.
- 1.28 CBRE are currently undertaking a detailed review of the BXS financial model and assumptions to inform the best consideration sign off process to enable the council to dispose its land assets to BXS JVLP for development. This process will set the minimum council's land value to be achieved at the next viability appraisal date (the Phase Unconditional Date) as to which see below.
- 1.29 In addition to the arrangements for payment of the council's land value, the council will remain entitled to a share of the surplus in JVLP – a surplus will be generated within JVLP where the value of the land within the project exceeds the costs of acquiring and servicing (putting in infrastructure) that land. That increased land value is crystallised on the disposal of serviced plots to developers.
- 1.30 There are only limited grounds on which the council (as landowner) can withhold approval (as landowner) of the FPP.

1.31 As explained in the report to Committee dated 17 March 2016, the council's ability to withhold consent as landowner is limited to the following circumstances. Paragraphs 1.32 – 1.41 explain that none of these circumstances apply:

- a) The council has not received confirmation of best consideration from the Phase Proposal Valuer (see below);
- b) Where the matter is one of housing management and the council reasonably believes that vacant possession could not be obtained within the proposed programme;
- c) The Phase Proposal includes open space which the council will not be able to dispose of having considered relevant representations;
- d) The council believes that the consent of the Secretary of State is unlikely to be obtainable (where required);
- e) The Phase Proposal does not include a drawdown conditions longstop date. In this regard, the parties have agreed that there will need to be a rolling programme of the dates by which Plots should be drawn down in order for the project to progress in accordance with the programme. In particular, note that JVLP cannot draw down Plots where it is in default under the terms of the Project Agreement.

1.32 The report below briefly summarises work in progress.

a) The council has not yet received confirmation of best consideration from the PPV valuer.

1.33 Based on the Best Consideration mechanism and overage provisions as set within the Project Agreement that was agreed by Assets, Regeneration and Growth Committee on 17th March 2016, the council's duty to obtain best consideration in accordance with S233 of the Town and Country Planning Act 1990 must be achieved at approval of the revised First Phase Proposal.

1.34 The council's actual land value will be reviewed immediately prior to the Phase Unconditional Date, at which time the scheme design will have significantly progressed with greater certainty on costs and assumptions, and the achievement of conditions relating to land assembly, planning, highways, developer, warranties, funding and pre-let as appropriate (depending on the content of the phase). If the council land value is less than that agreed at the approval of the phase proposal, the viability test is not passed and the parties will work together to try and improve viability. Assuming the Phase Unconditional Date does occur, the land value is not crystallised (and therefore can go up and down) until satisfaction of a subsequent viability test prior to drawdown of the individual development plots within a phase.

1.35 Prior to the formal presentation of a Phase Proposal by JVLP to the council, the council and the PPV have been provided with the financial model and supporting professional reports to consider the inputs and assumptions made in the financial model which calculates (amongst other things) the potential viability of the proposed Phase and the council's potential entitlement to land value. Whilst the council has not secured independent advice from a quantity surveyor, the council is benefiting from a collateral warranty from Gardiner and Theobald as to the reasonableness of the assumptions used in relation to the estimated

cost of the development. CBRE have also been meeting with Argent Related as development manager on a regular basis to as part of the review which is expected to conclude in December 2019.

1.36 The value agreed in First Phase Proposal in 2017 for the Council's land interests was £10.5m. The emerging revised First Phase Proposal is larger than that approved in 2017, but includes greater third party land. It also takes into account that there is greater certainty on the costs and inputs given the advancement of the masterplan and that reserved matters approvals are now in place on several plots and infrastructure providers are now on board as well as shifts in the market place.

1.37 In order to ensure the programme is maintained, Committee approval is sought to delegate and authorises the Chief Executive in consultation with the Chairman of this Committee to determine that the Best Consideration requirement has been met subject to a) approval of the Business Plan by this Committee; b) completion of the Phase Project Valuer review and formal confirmation that the Best Consideration from the PPV Valuer at a minimum of council land value of £10.5m for formal approval of the revised FPP; and c) confirmation that all the tests set out in paragraphs 1.31 of this report will be met.

1.38 However, as explained above, at the Phase Unconditional Date should the council land value have fallen below the agreed valuation as at approval of the FPP, the council has the decision whether to proceed, or wait for the council land value to improve.

a) Where the matter is one of housing management and the council reasonably believes that vacant possession could not be obtained within the proposed programme.

1.39 The majority of land is within the draft revised First Phase proposal is within council ownership and is also included within the CPO1 and CPO2 Order lands. Only the Whitefields estate is land to which matters of housing management could apply. The council believes that vacant possession within the proposed programme can be achieved.

c) The Phase Proposal includes open space which the council does not anticipate it will be able to dispose of having considered relevant representations.

1.40 The draft revised Phase Proposal does not include open space which the council does not anticipate it will be able to dispose of having considered relevant representations.

d) The council believes that the consent of the Secretary of the State is unlikely to be obtainable (where required).

1.41 The council believes that the consent of the Secretary of the State is obtainable (where required).

e) The Phase Proposal does not include a drawdown conditions longstop date.

1.42 The council is advised that the Phase Proposal will include a drawdown conditions longstop date

Re-investment of council Land Value

- 1.43 The options for how the council takes its land value are set out in the Exempt report to the Committee on 17 March 2017. The council could take its land value as a capital sum at plot drawdown, which represents the most risk-free approach. However, in order to take advantage of the value that will be created through the regeneration and placemaking in the early phases, the Committee is asked to re-confirm that the council reinvest the council's land value in BXS and commission officers to explore options for consideration by the Committee in due course for the reasons set out in the 24 July 2017 report. The aim of such investment will be to secure a revenue stream for the council, and align the council's financial interests with those of its development partner.

BXS Legal Documentation

- 1.44 The BXS legal project documentation between the council and Argent Related is also being updated to reflect scheme development and the revised BXC finance and delivery. It is anticipated that the variation will be completed by the end of December in accordance with the delegations provided by this Committee on 27 November 2018.

Homes Building Fund

- 1.45 As highlighted in previous reports to the Committee, Argent Related on behalf of BXS JVLP has been in discussions with Homes England for some time to agree a loan facility from the Homes Building Fund (HBF) to be used to fund site wide infrastructure, phase incubation costs and site delivery to accelerate delivery of place and homes within BXS Mega Phase A. Mega Phase A comprises the land within LBB / BXS ownership and control following CPO 1,2 and 3, and is due to deliver circa 4,000 homes, office, retail and leisure, hotel rooms, student homes and community and educational facilities. This area is larger than the emerging revised First Phase Proposal.
- 1.46 The HBF funding will help accelerate the delivery of homes and will create a better place quicker by bringing forward the delivery of the High Street connecting into the new station, public parks and schools. It will enable BXS to make progress through unfavourable market conditions as well as responding quickly to more favourable market conditions when they arise, as well as improving viability. It will also help bring subsequent phases forward earlier by enabling paralleled delivery (polycentric development) in different areas of BXS.
- 1.47 Homes England and MHCLG have now approved the loan facility subject to final confirmation by HM Treasury. It is anticipated that the HBF facility will be in place by the end of the year and drawn down as soon as the BXS Business Plan and revised First Phase Proposal are approved to fund site wide infrastructure and to repay the Strategic Infrastructure Loan provided by the council.
- 1.48 The Loan Facility Agreement (LFA) will be directly between BXS JVLP and Homes England and is currently being finalised on the basis that council land (alongside land acquired by BXS JVLP and Argent Related) is provided as security to the LFA in line with the approvals provided by this Committee on 13 June 2019. In this regard, BXS JVLP have agreed to provide an indemnity to cover any council losses in the event of a default by BXS JVLP.
- 1.49 As explained in that report to this Committee on 13 June 2019, it is market norm for infrastructure loans to be secured against land. The provision of council land as security enables a beneficial finance interest rate to be agreed by Homes England with BXS JVLP. This in turn is projected to result in a higher residual land value payable to the council on

the drawdown of its land. However, this approach increases the risk to the council's ability to deliver BXC in line with the council's Procurement and Delivery Strategy approved July 2014 <http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=7960&Ver=4> and its investment in the project, should BXS JVLP default on the loan facility as Homes England could exercise its power of sale under the finance documents to force through disposal of the land.

- 1.50 In order to mitigate this risk and following the Committee approval "*in principle that the council enters into the Direct Agreement with Homes England to facilitate the Housing Building Fund Loan between BXS JVLP and Homes England to fund infrastructure and accelerate housing delivery*" on 13 June 2019, council officers have been working with HE to put in place the Direct Agreement on the basis of council land being used as security to ensure that, in the event of BXS JVLP default, both parties work together to agree a revised delivery strategy to deliver the project through a contractual agreement that will maintain housing delivery as opposed to allowing HE to simply sell the council's land to realise the value of its debt.
- 1.51 The parameters of the Direct Agreement are set out in the report to the Committee in June 2019 as follows:
 - 1) the council will grant security to HE over an appropriate land interest
 - 2) the council will retain influence over the future delivery of the scheme
 - 3) The council will agree with HE:
 - a) the extent to which HE has influence over approving changes within the project (namely approval of business plan/and any phase proposal) as a term of the facility agreement or, the extent to which it would wish its interests to be represented by the Council as (a) landowner and (b) JV partner.
 - b) the extent to which HE will monitor project progress and achievement of milestones to be a term of the facility agreement. In this regard, there has been discussions between the council and HMG as to how this relates to the wider monitoring of the BXC grant agreement going forward.
- 1.52 Recognising that both HE and the council are public sector organisations, with a shared interest in delivering a timely, high quality scheme in the event that a default occurs, HE will not – for a period to be agreed - take enforcement action pursuant to its security documentation and recognises that the council requires an opportunity to work through the resolution processes set out in the BXS legal project documentation.
- 1.53 In the event the default cannot be remedied/resolved, HE agrees to work with the council to try to rescue the position and secure delivery of the project and agree a revised delivery strategy to ensure that the project proceeds and the development is built out having regard to the requirements of the project as set out in council's Procurement and Delivery Strategy approved July 2014 and the costs incurred by both parties at the time of default
- 1.54 In parallel to the LFA, the Direct Agreement (DA) itself is currently being finalised.
- 1.55 These legal documents will require consequential changes to the BXS Project and Partnership/Shareholder legal documentation. In this regard, it is noted that the Committee has delegated to the Chief Executive in consultation with the Chairman of the Committee authority to "*finalise the terms and enter into the Direct Agreement with Homes England including any associated or ancillary documentation required in connection with the same*".

For transparency, Committee approval is sought to update the previously approved recommendation as follows *“finalise the terms and enter into the Direct Agreement with Homes England including variations to any associated or ancillary documentation required in connection with the same including the BXS Project Agreement and Partnership/Shareholder Agreements.”*

2. REASONS FOR RECOMMENDATIONS

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

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 In respect of the HE loan; the alternative is for HE/BXS JVLP to explore other forms of security or to progress based on an unsecured loan. The current option accelerates delivery, creates greater financial resilience and increases the council's land value and the proposed framework enables both investors in the scheme to determine the strategy at the time that a default occurs, taking into account market factors. The Direct Agreement will need to address deadlock.

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.

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

Budget Monitoring

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

- 5.1.2 The approved budget for land acquisition to facilitate the BXC programme is £63.13m, furthermore, there was expenditure on advanced acquisitions of £4.06m. This is in addition to the Thameslink budget. Actual spend to date is £51.08m. The current forecast for 2019/20 is £6.34m.

Thameslink Station

5.1.3 The current approved budget in the capital programme is £364.5m following confirmation of the HMG grant funding agreement. The GLA previously provided a grant of £2.9m to support the BXC Programme.

5.1.4 Actual spend to date is £76.2m. The total contractual commitments at the end of October 2019 is £239.3m. The council has submitted drawdown requests against the HMG grant totalling £197.5m, of which all has been paid to date. The current forecast for 2019/20 is £88.31m.

Critical Infrastructure

5.1.5 As part of the revised delivery strategy as set out in the report to the June Committee, the council is taking forward the delivery of parts of the newly created 1AN Infrastructure phase. The council has entered into contract with Conway Aecom to deliver these works and is engaging DP9 to discharge the pre-commencement planning conditions and New Steer on CPO matters as outlined above.

5.1.6 These works are funded from the £55m core critical infrastructure budget that is being provided as part of the MHCLG Revised Funding Agreement for Brent Cross Cricklewood. Actual spend to date is £0.07m. The current forecast for 2019/20 is £21.93m.

Brent Cross North/London

5.1.7 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.

Brent Cross South

5.1.8 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. The facility has now been entered and £19.86m drawn down by BXS JVLP. The remainder of the facility will be drawn down, in accordance with the plan, within this financial year. As explained in paragraph 1.45-1.55 above, the HBF loan facility will also be used to repay the funding provided by the council through the Strategic Infrastructure Loan to fund early enabling and demolition works.

Social Value

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

5.2 Legal and Constitutional References

5.2.1 The council's Constitution, Article 7.5 responsibility for function, states the functions of the Housing and Growth Committee, includes responsibility for regeneration schemes and asset management.

5.2.2 Council, Constitution, Article 10 Table A states that the Housing 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 as the term is set out at s 123(2) of the

Local Government Act 1972.

5.2.3 The council has a range of powers to enter into the legal agreements referred to in this report. The general power of competence under paragraph 1 of Section 1 of Chapter 1 of the Localism Act 2011 enables it to do anything that individuals can do subject to any specific restrictions contained in legislation and the 'incidental power' in 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. If Homes England's security is to be by way of a legal charge, then the power to grant this is not prevented by section 13 Local Government Act 2003 where the monies are borrowed by BXS JVLP (and not by the Council) and where it is the ultimate responsibility of a third party to make the repayments (and the Council is suitably indemnified for its exposure). The Council will rely on section 1 of the Localism Act 2011 to enter into the Direct Agreement, grant the legal charge and (if necessary) enter into the loan agreement with Homes England. There is no need for the Council to form a company under section 4 Localism Act 2011 where its purpose for entering into the arrangements with Homes England is to achieve the comprehensive regeneration of 'Mega Phase A' (and thereafter the wider scheme) as opposed to being a commercial one. It may nevertheless choose to form a company or to transfer the relevant property interests into an existing company for reasons of structuring the transaction.

5.3 Risk Management

5.3.1 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:

5.3.2 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 significantly mitigated through the Revised Funding Agreement with Government. The Grant Agreement requires that the BXC project is monitored to milestones. In this regard, the Agreement allows these to be updated through the monthly meeting of the Governance Assurance Board, chaired by the council's Deputy Chief Executive, to reflect scheme development and market conditions and other external factors. A cost review of the BXT budget is to begin shortly to take account of the contract awards and review the programme and cost implications as a result of the shift in possessions as set out in paragraph 1.3 of this report. This review will be reported to the Committee in January 2020.

5.3.3 Station Delivery Date – there is the risk that the May 2022 station opening date cannot be achieved. This would result in additional costs due to programme prolongation as the earliest viable opening date would be December 2022 due to restrictions on timetable changes. This could be later depending on other works on the railway. This risk has materialised with the loss of railway possessions for the track slews as explained in paragraph 5.3.2 above. The council is now working with DfT and Network Rail alongside the Train and Freight Operators to develop a revised industry integrated programme. This also has programme and cost risks for BXS that need to be worked through. An update will be provided to the next Committee meeting.

5.3.4 Network Change – it is necessary to resolve outstanding issues to confirm Network Change.

This is required by January 2020 so to enable the commissioning of the south sidings. As reported above, this risk is being actively managed and should be resolved shortly. Network Change has now been achieved. The council is reviewing the documentation provided by Network Rail and if all in place and agreed by legal advisers, this risk will be removed from the next report to this Committee.

- 5.3.5 Train Operating Timetable - The BXT team have, for some time been facilitating a regular meeting with Train Operators (EMT and GTR), the DfT, and NR. This Board (Rail Operation Assurance Board) deals with all rail industry issues and interfaces. One of the headline areas of interest is the new rail timetable to accommodate the planned stopping pattern at the new station. The industry has a complex and lengthy process for securing future timetables which takes into account competing bids for access. NR and the DfT have both confirmed that everything that can be done at this stage has been done to secure the desired stopping pattern, and NR have published a letter outlining the timetable of events leading up to the publication of the new timetable. There are risks associated with this process, notably around the uncertainty of the GTR franchise, and the publication later this year of the "Williams Review" which will make recommendations on the future structure of the industry. The Board will be monitoring developments closely.
- 5.3.6 Thameslink delivery costs – as with all major programmes there is the risk that costs will increase during programme delivery. The BXT budget is under review to take account of the contract awards on both the station and waste as well as progress on the TOC and Rail Systems and Sidings contracts. This risk is being actively managed. The contract between the council and NR is an Emerging Cost contract. As indicated in previous reports, all emerging cost contracts entered into will require strong contract management to ensure all costs incurred are reasonable. As part of the signed IA the council has open book access to all of Network Rail's financial information relating to invoiced costs incurred on the programme. This extends 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. In this regard, the regular senior level meetings between Network Rail and the council/Re delivery are continuing to review the costs each month. Similarly, there is an on-site presence by the council/Re delivery team to be monitoring programme and work achieved, particularly during track possessions.
- 5.3.7 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.

5.3.8 Critical Infrastructure (Grant Funded Works) - The council is now responsible for delivering the Southern Junctions and as the Funder, delivery of Plots 53 & 54 providing new homes to rehousing residents from the Whitefield Estate.

5.3.9 Homes Building Fund - It is market norm for infrastructure loans to be secured against land. However, this approach increases the risk to the council's delivery control and its investment in BXC should BXS JVLP default on the loan facility. In order to mitigate this risk, Senior Officers are working with Homes England to put in place a framework that, in the event of default, enables both parties to work together to agree a revised delivery strategy that will continue to achieve housing delivery as well as recovering investment to date. This framework will be documented through a contractual Direct Agreement between the council and Homes England. In addition, BXS JVLP has agreed to provide an indemnity to cover council losses.

5.3.10 Resourcing – the project is now in the delivery stage. In addition, the council has taken on additional delivery items through the revised delivery strategy and needs to deploy sufficient resources. There is a need to ensure resilience within the programme in the event that key persons depart the project as well as to update the succession planning strategy.

5.3.11 Residential – 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 by the council taking on delivery responsibility for Part 1 Whitefield Estate relocation and the novation of the existing contracts. In addition, the council regularly communicates with resident steering groups as well as residents to keep affected parties up to date with the latest programme dates.

5.3.12 Economic – There is a risk that the prevailing economic position for the traditional retail sector will continue alongside residential and commercial given current market conditions. This could result in reduced demand for retail space and administration to existing retailers. To mitigate this both BXN and BXS development partners are exploring/reviewing diversification of offer within BXC. Wider macro-economic shocks may also impact the residential and office markets in London.

5.3.13 Planning – There is a risk that the BXN Partners do not meet the timescales established in the s73 Permission. This risk has been mitigated through the planning applications submitted as part of the revised delivery strategy.

5.4 Equalities and Diversity

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

5.4.2 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.

5.5 Corporate Parenting

5.5.1 None in the context of this report.

5.6 Consultation and Engagement

BXC Programme wide

5.6.1 Now in post, the Strategic Communications Lead continues to work closely with development partners and their contractors to co-ordinate the overarching Brent Cross Cricklewood communications delivery.

5.6.2 Communications leads from across the three projects meet monthly to share updates and communications action plans to achieve a collective voice across the wider development.

BXC Channel Strategy

5.6.3 The development of a dedicated microsite is underway. A tender process is now complete and the successful bidder, following a Chief Officer Decision, has been appointed. The website, which is expected to be live by the second week of January, will provide programme-wide updates and information to minimise the impact of construction on residents. The website will also tell the story of Brent Cross Cricklewood and promote the overall vision for the area.

5.6.4 In January, to coincide with the launch of the website, a quarterly BXC resident newsletter will also be launched. The newsletter will include an update on each project and outline the forthcoming communications residents can expect to receive from our partners regarding construction works in the area. The newsletter will promote key consultations, news, information and community opportunities.

5.6.5 A dedicated email BXCRenovation@Barnet.gov.uk has been created for resident comments and questions.

5.6.6 These channels will be supported by direct stakeholder and communications engagement activity developed alongside individual construction management plans.

5.6.7 Construction programmes and key information can be found at barnet.gov.uk/brentcrosshameslink and brentcrosssouth.co.uk

6 BACKGROUND PAPERS

- 6.1 Assets, Regeneration and Growth Committee, 27th November 2018, Brent Cross Cricklewood Update Report
<http://committeepapers.barnet.gov.uk/documents/s49849/Brent%20Cross%20Cricklewood%20Update%20Report.pdf>
- 6.2 Policy and Resources Committee 11 December 2018 Brent Cross Funding
<https://barnet.moderngov.co.uk/documents/g9460/Public%20reports%20pack%2011th-Dec-2018%2019.00%20Policy%20and%20Resources%20Committee.pdf?T=10>
- 6.3 Full Council 18 December 2018 Brent Cross Cricklewood Update Report
<https://barnet.moderngov.co.uk/documents/g9454/Public%20reports%20pack%2018th-Dec-2018%2019.00%20Council.pdf?T=10>
- 6.4 Policy and Resources Committee 20 February 2019 Brent Cross Funding
<http://barnet.moderngov.co.uk/documents/s51244/Brent%20Cross%20Cricklewood%20Funding%20and%20Delivery%20Strategy%20Report.pdf>
- 6.5 Chief Officer Decision, Brent Cross Cricklewood Funding and Delivery Strategy, 6 March 2019
<http://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=7163>
- 6.6 Assets, Regeneration and Growth Committee, 25 March 2019, Brent Cross Cricklewood Update Report
<http://barnet.moderngov.co.uk/documents/s51730/Brent%20Cross%20Cricklewood%20Update%20Report.pdf>
- 6.7 Assets, Regeneration and Growth Committee, 13 June 2019, Brent Cross Cricklewood Update Report
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=9928&Ver=4>
- 6.8 Assets, Regeneration and Growth Committee, 16 September 2019, Brent Cross Cricklewood Update Report
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=9929&Ver=4>