

	ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER 2nd May 2019
Title	Brent Cross Cricklewood Scheme – Variations to the Brent Cross North Property Development Agreement and associated legal documentation.
Report of	Deputy Chief Executive (in consultation with the Chairman of Assets, Regeneration and Growth Committee)
Wards	Golders Green, Childs Hill and West Hendon
Status	Public
Enclosures	Yes
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Summary

This report confirms the decision by the Deputy Chief Executive in consultation with the Chairman of the Assets and Regeneration Committee to agree and finalise and thereafter to authorise the Deputy Chief Executive to enter into and complete variations of the legal documentation with the Brent Cross North (BXN) developers to reflect the required consequential changes to the legal documentation as a result of the revision to the delivery strategy and the proposed transfer of work packages from the BXN developers to the Council and Brent Cross South.

Decisions

1. That the Deputy Chief Executive after having consulted with Chairman of the Assets and Regeneration Committee confirms the decision to proceed to finalise and agree the detail of the consequential changes required to the Brent Cross Property Development Agreement and Co-operation Agreement,

CPO indemnity agreement and Grant Agreement and associated commercial documentation.

2. To authorise that the Council following agreement and finalisation of the changes referred to at 1 above now enters into and completes the variations to the Brent Cross Property Development Agreement and Co-operation Agreement, CPO indemnity agreement and Grant Agreement and associated commercial documentation. The full list of required documentation is set out below:
 1. Decoupling contract relating to Claremont Park
 2. Variation of the property development agreement
 3. Variation of the co-operation agreement
 4. Variation of the CPO indemnity agreement
 5. Variation of the grant agreement
 6. Deed of release of the existing restrictive covenant
 7. New deed of restrictive covenant
 8. Deed of release of the retail park option and pre-emption

1. WHY THIS REPORT IS NEEDED

- 1.1 The Council has been working with Hammerson, Aberdeen Standard and Argent Related to revise the Brent Cross Cricklewood (BXC) delivery strategy to enable Brent Cross Thameslink (BXT) and Brent Cross South (BXS) to commence ahead of Brent Cross North (BXN). An update on the progress can be found in the links to the reports to the Assets, Regeneration and Growth Committee (ARG) and Policy and Resources Committee (P&R) within the background section.

Background

- 1.2 The comprehensive regeneration of the BXC area is a long-standing council objective. The scheme is being delivered in three parts:
 - **Brent Cross North** (BXN) – the shopping centre expansion, critical highways infrastructure and 800 homes. Due to be delivered by Hammerson & Aberdeen Standard, 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. Due to enter into contract with Network Rail (NR) December 2018; station opening May 2022. Any slippage in entering into the NR contract will delay station opening at least until December 2022.
 - **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 2021/2 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.
- 1.3 Substantial progress has been made on the all three projects since 2014 as set out in previous quarterly reports to the 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 two years.

- 1.4 As reported to the Assets Regeneration and Growth (“ARG”) and the Policy and Resources (“P & R”) Committees, BXN has 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.
- 1.5 BXT has now completed early site preparatory works to remove Japanese Knotweed and construction spoil from the sidings area and the main works commenced following approval of the Revised Funding Agreement. The Chief Executive as delegated by the P & R Committee on 20 February 2019 approved the Revised Funding Agreement (RFA) with HM Government (HMG) in consultation with the Chairman of the Policy and Resources Committee and having consulted members of the Assets, Regeneration and Growth and Policy and Resources Committees on 6 March 2019. The link to that report is as follows.
<http://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=7163> .
- 1.6 If BXT is to meet the station opening in May 2022, it is essential that works continue to take advantage of the already secured rail possessions. Any delay to station works will not only increase cost but will also delay the station opening which in turn will push back comprehensive development. It is important to note that the BXS Programme is designed around the May 2022 opening date, and any slippage will have significant implications for the rapid delivery of new homes.
- 1.7 The Council has now secured vacant possession of the Claremont Industrial Estate to allow BXS to undertake site preparatory works and commission the utility disconnections and asbestos surveys and demolitions within the area for the first phases of BXS. The main infrastructure works are scheduled to commence mid 2019 followed by construction of the residential buildings in late 2019 and first residential completions from 2021/2 onwards. This is dependent on the Thameslink Station works, which were commissioned in December 2018, maintaining the Station opening date of May 2022.
- 1.8 To ensure that BXN’s deferral does not delay the comprehensive redevelopment of BXC, the council has been working with both BXN and BXS to agree the revised delivery strategy to enable BXT and BXS to commence ahead of BXN. This strategy is now finalised and requires consequential changes to the existing legal documentation to reflect the transfer in delivery responsibility for core critical infrastructure items from BXN to the council or BXS.
- 1.9 The revised delivery strategy will create the environment that allows:
 - Momentum on the BXC project to be maintained.
 - Critical infrastructure to come forward from early 2019 onwards that benefits BXN, BXS and BXT and the wider community. This includes improvements to the A5/Cricklewood Lane junction.
 - The Council to enter into required contracts to deliver the station by May 2022.
 - BXN to commence once in a position to commit.
 - The platform for BXS to continue to attract anchor placemaking businesses.

- BXS to continue detailed design (having already secured detailed planning permission) and procurement of buildings, infrastructure and utilities to support a programme aimed at carrying out initial enabling works from Q1 2019 with first phase infrastructure packages to begin later in 2019 and buildings in 2020. The first new homes are due for completion in 2021/2.
 - Build the BXS brand and start promoting the first market facing housing and commercial buildings, which in turn supports the delivery of housing and generation of business rates in the line with Regeneration Full Business Case approved by HMG.
- 1.10 The required consequential changes to the existing legal documentation with BXN are now agreed and will enable the transfer of the delivery responsibility for core critical infrastructure items from BXN to the council or BXS in respect of both the infrastructure works and land acquisitions as detailed in the Asset, Regeneration and Growth Committee on 27 November 2018 and the Policy and Resources Committee on 20 February 2019. These works and land acquisitions are being funded by the BXC Grant being provided by HM Government as set out in the RFA.
- 1.11 In accordance with the approval of the Assets, Regeneration and Growth Committee on 27 November 2018, authorisation was given to the Deputy Chief Executive following consultation with the Chairman of the Committee to finalise the revised delivery strategy and agree the detail of the consequential changes required to the Brent Cross Property Development Agreement and Co-operation Agreement, CPO indemnity agreement and Grant Agreement and associated commercial documentation.
- 1.12 The key changes to the documentation are as follows:

PROPERTY DEVELOPMENT AGREEMENT (PDA)

- 1.13 The latest deed of variation makes amendments to the original PDA dated 3 March 2015 as amended by a deed dated 11 July 2016 and a second supplemental agreement dated 26 September 2018. The key changes are as follows:
- a) Variations to the definitions to reflect the fact that the Council will be delivering critical infrastructure (namely the southern junctions and Tilling Road) in advance of delivery of BXN subject to the necessary planning variations being obtained.
 - b) BXN will reimburse the council any grant overspend for the reallocated infrastructure works, as evidenced by the reports and certificates required to be presented under the Grant Agreement up to a capped amount. This includes the land needed around Adrian Arches and the cost of doing the trench works if the council steps-in to do these works.
 - c) Revisions to the licence, access and construction compound areas to reflect the current extent of land which is anticipated to be required by BXN given the transfer of delivery responsibility for key infrastructure works. As in the existing PDA, BXN will indemnify the council, the Relevant Entity and any occupier against all liabilities suffered or incurred as a result of the Developer entering onto these areas.
 - d) A new form of New Deed of Restrictive Covenant will be entered into as agreed between the parties.

- e) The details of the Council Workstreams (and responsibility for the Council's costs) have been updated.
- f) The Whitefield Estate Replacement Units Schedule now reflects that:
- the Council and the Developer have agreed the Residential Relocation Strategy; and
 - BXN has appointed London & Quadrant Housing Trust as the Preferred Affordable Housing Provider in connection with the Whitefield Estate Replacement Units pursuant to a Funding and Development Agreement (FDA) dated 24 October 2018; and
 - subject to agreeing the terms, the Council will enter into a novation of the FDA so that the Council becomes the funder under the FDA. The obligation to provide the Whitefield Estate Replacement Units (Part 1) sits with BXN until and including the date of completion of the FDA Novation Deed; and thereafter the Council.
- g) There are detailed new provisions in schedule 16 in connection with the electricity distribution network arrangements. Previously, BXN was intending to procure the Primary Sub-Station Works. Going forward, the Council intends to facilitate the procurement of the Primary Sub-Station Works through the Southern Developer or its nominee. If the procurement of the Primary Sub-Station Works does not progress as the Parties anticipate, in certain circumstances, BXN can step-in in lieu of the Council; and if the Developer does step-in then, broadly, the terms of the relevant schedule will be 'flipped' so that the obligations previously imposed on the Council will become obligations of the Developer, and vice versa.
- h) There are new provisions in schedule 1 for the parties to cooperate in respect of the planning aspects of the revised delivery strategy.
- i) Cardiff House will no longer be acquired by BXN, but by the Council.

GRANT AGREEMENT

- 1.14 The latest deed of variation makes amendments to the original grant agreement dated 11 July 2016 as amended by the second supplemental agreement dated 26 September 2018.
- 1.15 Under the July 2016 grant agreement, the TIF Funding of £55m is to be used to fund the TIF Package (i.e., the proposed works and payments listed in the Grant Schedule). However, the funding is now coming from central government and is subject to the terms of that funding. The grant agreement has therefore been updated to reflect this. New clauses have been added that specify that the Council will only use the funding to fund the following elements:
- Whitefield Estate Part 1 Costs
 - Highway Works (Southern Junctions / Tilling Road and Claremont road Junction Improvements
 - Electricity Substation
 - Land acquisitions.

- 1.16 The Council must keep the Developer informed through the Integrated Programme Management Office of: the programme for the delivery of each Council Works Element; the amount of TIF Funding spent (or committed) in relation to each Council Works Element by way of a Council Expenditure Report provided to the Developer at least every 3 months; the placing/variation/amendment of any Qualifying Contract; any notice received or sent relating to a Qualifying Event of Default (clause 3.1).
- 1.17 In in the event of non-performance, BXN can step in in certain circumstances after the Unconditional Date but prior to the TIF Longstop Date.

2. REASONS FOR RECOMMENDATIONS

- 2.1 To secure the comprehensive regeneration of the Brent Cross Cricklewood.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 This is the only option to secure the comprehensive regeneration. The alternative, therefore, is not to proceed which would result in the BXC scheme stalling and the very real possibility that delivery of 7,500 new homes and comprehensive development not being achieved.

4. POST DECISION IMPLEMENTATION

- 4.1 The council will enter into the variations to the Brent Cross Property Development Agreement and Co-operation Agreement, CPO indemnity agreement and Grant Agreement and associated commercial documentation.

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.

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

- 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.

5.1.2 As stated in this report, the council has agreed with HMG the revised 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.

5.1.3 On 20 February, Policy and Resources Committee approved the creation of a capital budget for the core critical infrastructure works totalling £55m funded by grant from MHCLG.

5.1.4 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.

5.3 **Social Value**

5.3.1 The Brent Cross Cricklewood programme will secure wider social, economic and environmental benefits. This is set out in more detail within the relevant sections of the Committee reports included within the background section of this DPR.

5.4 **Legal and Constitutional References**

5.4.1 As outline in the Councils Constitution Article 7, Section 7.5 Responsibility for Functions – The Assets, Regeneration and Growth Committee is responsible for regeneration strategy and overseeing major regeneration schemes, asset management, employment strategy, business support and engagement.

5.4.2 The Assets, Regeneration and Growth Committee delegated authority to the Deputy Chief Executive, following consultation with the Chairman of the Committee, to finalise the revised delivery strategy and agree the detail of the consequential changes required to a) the Brent Cross Property Development Agreement and Co-Operation Agreement, CPO indemnity agreement and Grant Agreement and associated commercial documentation at the meeting of the 27th November 2018.

5.4.3 Council, Constitution, Article 10 Table A states that the Assets Regeneration and Growth Committee is responsible for authorising (1) all land transactions 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.

5.4.4 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 and 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.

5.4.5 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.

5.5 Risk Management

- 5.1.1 Risk management has been applied across all levels of the programme. As reported to the ARG and P&R Committees, 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. The key risks are summarised on those reports.
- 5.1.2 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 and by the Revised Delivery Strategy to enable BXT and BXS to be delivered ahead of BXN as documented in the BXN legal agreements.
- 5.1.3 Delivery costs – whilst the critical infrastructure costs has been developed by contractors and the Council's professional advisors, as with all major programmes there is the risk that costs will increase during programme delivery. This is reflected in the commercial agreements and BXN has agreed to meet costs overruns up to a capped amount.

5.6 Equalities and Diversity

- 5.6.1 Section 149 of the Equality Act 2010 sets out the Public-Sector Equality Duty which requires public authorities and organisations acting on their behalf to have due regard to the need to:
- eliminate discrimination, harassment, victimisation and other conduct prohibited by the Act
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it
- 5.6.1. The relevant protected characteristics are age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex, and sexual orientation.
- 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 and private homes in the Borough as well as providing employment through the creation of a new town centre with leisure, health and educational facilities. The delivery of the Thameslink Station will enhance public transport provision and improve accessibility and provide greater choice for all. It should be emphasised that a fully integrated and accessible town centre will be created as part of these proposals.
- 5.6.3. The delivery of the regeneration scheme is being conducted in consultation with the Whitefield Estate Residents. The Development Partners and Council/Re representatives regularly attend the Whitefield Estate Steering Group meetings to keep residents updated on matters. These meetings will continue throughout the duration of the regeneration scheme.
- 5.6.4. The original outline planning permission (2010) and the Section 73 permission (2013) has an ES which includes the socio-economic impact assessment, this aspect is also covered by the Revised Design & Access Statement. An assessment of the socio-

economic impact of the scheme is provided within Chapter 8 of ES where it explains the impacts on employment, housing and on the wider economy. Full details of the assessment are in the Background Papers, paragraph 6.6.

5.6.4 The scheme proposals will contribute to the environmental and social well-being of its area by:

- promoting social inclusion and tackle deprivation and discrimination
- promoting a safe, well-lit and secure environment
- creating sustainable homes (building all homes to lifetime standards and 10% of properties will be wheelchair accessible or easily adaptable for wheelchair users)
- creating a diversity of employment opportunities available and accessible to local people
- improving accessibility to the sites due to the transport improvements and this will increase opportunities in the wider area
- providing a range of transport choices for all users of the site (pedestrian footpaths, cycle lanes, public transport, car access)
- improving the quality of the public realm, there will be a network of streets and squares to create the new town centre.

5.7 Corporate Parenting

5.7.1 None in the context of this report.

5.8 Consultation and Engagement

5.8.1 As set out in the main report to the Assets, Regeneration and Growth Committee 25 March 2019.

<https://barnet.moderngov.co.uk/documents/s51730/Brent%20Cross%20Cricklewood%20Update%20Report.pdf>

5.8 Insight

5.8.1 None in the context of this report.

6. BACKGROUND PAPERS

6.1.1 Assets, Regeneration and Growth Committee 25 March 2019.

<https://barnet.moderngov.co.uk/documents/s51730/Brent%20Cross%20Cricklewood%20Update%20Report.pdf>

6.1.2 Policy and Resources Committee 20th Feb 2019

<https://barnet.moderngov.co.uk/documents/s51244/Brent%20Cross%20Cricklewood%20Funding%20and%20Delivery%20Strategy%20Report.pdf>

6.1.3 Chief Officer Delegated Powers Report approving the Revised Funding Agreement (RFA) with HM Government (HMG) in consultation with the Chairman of the Policy and Resources Committee and having consulted members of the Assets, Regeneration and

Growth and Policy and Resources Committees, 6 March 2019.
<http://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=7163> .

6.1.4 Assets, Regeneration and Growth Committee 25 March 2019.

<https://barnet.moderngov.co.uk/documents/s49849/Brent%20Cross%20Cricklewood%20Update%20Report.pdf>

7. DECISION TAKER'S STATEMENT

7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision-making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations. The decision is compliant with the principles of decision making in Article 10 of the constitution.*

Chief Officer (Deputy Chief Executive)

Dated: 2.5.2019

Chairman of the Assets Regeneration and Growth Committee

Dated: 2.5.2019