

	<p style="text-align: center;">ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER in consultation with the Chairman of the Housing and Growth Committee 9 December 2020</p>
<p style="text-align: center;">Title</p>	<p style="text-align: center;">Brent Cross – Toys R Us</p>
<p style="text-align: center;">Report of</p>	<p>Chief Executive</p>
<p style="text-align: center;">Wards</p>	<p>Child’s Hill, Golders Green and West Hendon</p>
<p style="text-align: center;">Status</p>	<p>Public with accompanying exempt report (Exempt by virtue of paragraphs 3 and 5 of Schedule 12A Local Government Act 1972) on account that it contains information relating to the financial or business affairs of any particular person including the authority holding the information and information in respect of which professional legal privilege could be maintained in legal proceedings.</p>
<p style="text-align: center;">Enclosures</p>	<p>None</p>
<p style="text-align: center;">Officer Contact Details</p>	<p>Karen Mercer</p>

Summary

Following approval from the Housing and Growth Committee on 16 March 2020 and 6 July 2020 to; (i) amend various aspects of the 1994 Toys R Us lease (Headlease 2), and (ii) to accept a surrender of the 1991 Toys R Us lease (Headlease 1) and (iii) to incorporate the Headlease 2 site within the Brent Cross South scheme, this report confirms that the Chief Executive in consultation with the Chairman is now ready to authorise completion of the required and agreed legal documents in exercise of the delegations conferred by the said Committees .

Decisions

1. To authorise the completion of (a) the surrender of part of Headlease 1 as defined in the Exempt report entered into between the Council and Toys R Us (b) a Deed of Variation to vary Headlease 2 (“the TRU Site”) as defined in the Exempt Report (c) the consequential amendments required to the BXS legal documentation to

ensure that the TRU Site forms part of the BXS scheme; and d) revisions to the Direct Agreement between the council and Homes England (Lender) and to the Legal Charge to include the freehold of the TRU Site.

1. WHY THIS REPORT IS NEEDED

- 1.1 Following approvals by the Housing and Growth Committee (H&G, formerly Assets, Regeneration and Growth Committee) on 27 January and 16 March 2020, the council completed the variations to Brent Cross South (BXS) Project Agreement and Corporate Documents (Limited Partnership Deed, Shareholders' Agreement, Collateral Warranty and Delegation Warranty) and all ancillary documents and 2) Homes England Documents (Facility Agreement, Direct Agreement, Deed of Indemnity and Counter Indemnity, Legal Charge and Deed of Subordination) to enable the Brent Cross South (BXS) to proceed.
- 1.2 On 16 March 2020, the Housing and Growth Committee gave approval to delegate to the Deputy Chief Executive in consultation with the Chair of this Committee to finalise and complete; a) the surrender and re-grant of the former Toys R Us lease for a longer term and to widen the existing user restriction;) the consequential amendments required to the BXS legal documentation to ensure that the site forms part of the BXS scheme; c) the Direct Agreement between the council and Lender (paragraph 1.47). The re-grant originally envisaged to effect the amendments to Headlease 2 has been documented by way of Deed of Variation which is optimal from the Council's point of view but remains in line with the principles agreed at the March 2020 Committee.
<https://barnet.moderngov.co.uk/documents/s58340/BXC%20Housing%20and%20Growth%20update%20Report.pdf>
- 1.3 On 6 July 2020 the recommendations recorded by the Housing and Growth Committee included to “*Note that the Homes England Loan Facility Agreement with BXS and Homes England and the Direct Agreement between Homes England and the Council (including the Deed of Indemnity and Counter Indemnity, Legal Charge and Deed of Subordination) were completed on 30 March 2020, and confirm that the Chief Executive in consultation with the Chair of this Committee be authorised to agree and amend on the Council's behalf the terms of the legal charge and any consequential agreed changes to the direct agreement to reflect disposals and acquisitions by the Council and Brent Cross South Limited Partnership (BXS LP) throughout the BXS development and to complete the same as set out in paragraph 1.43 of this report.*”
- 1.4 As explained in the Committee report on 16 March, Argent Related (through Brent Cross South TRU) had acquired the former Toys R Us site by way of assignment in line with the approvals of this Committee on 16 September 2019, which delegated to the Assistant Director – Estates to provide the necessary approvals on behalf of the council as freeholder to consent to the assignment of the lease and complete this transaction (paragraph 1.35 of that report).
- 1.5 The council's BX regeneration and legal teams have been working with Brent Cross South (BXS) to agree the surrender of the Headlease 1 and the variation of the Headlease 2 and the Council has managed to effect this by a Deed of Variation rather than a re-grant. The Variation widens the user restriction beyond use limited to the sale of children's toys so that the property can be properly managed/optimized until re-development as part of the BXS scheme. It has been agreed to vary the user clause of

the Headlease 2 so that the TRU site may be used for the sale of comparison goods within Class A1 of Part 1 of Schedule 1 of the Use Classes Order and for any ancillary car parking. The tenant can also use the TRU site for any use that that does not require a new planning permission from the Local Planning Authority. The tenant cannot use it otherwise unless it gets the Landlord's prior written consent (such consent not to be unreasonably withheld or delayed) which shall be obtained prior to making an application for planning permission. The Variation has been effected for nil value.

- 1.6 The increase in value associated with this transaction will be identified in the relevant Phase Proposal and will flow through to the council as surplus in accordance with the BXS legal documentation once the Site is developed. In this regard, it is important to note that this transaction includes the re-financing of the acquisition through the Homes England Loan Facility thereby reducing finance costs for BXS JVLP and to include the council's freehold reversion as well as the BXS TRU lease within the existing Homes England Legal Charge.
- 1.7 The legal documentation is now ready for completion and summarised in the high-level legal summary appended to the exempt report.

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

None in the context of this report.

4. POST DECISION IMPLEMENTATION

- 4.1 The legal documents will proceed to completion.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The reports to the Housing 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 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. An update of the budget is provided in the report to the Housing and Growth Committee on 24 November 2020.

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 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.

5.4.1 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.

5.4.2 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.

5.4.3 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 Council's legal advisors Gowlings, have advised that the power to grant this is not prevented by section 13 Local Government Act 2003 as the monies are borrowed by BXS JVLP (and not by the Council) and the Council's Director of Resources and Section 151 Officer has reviewed the corporate structure and confirmed that the HE Loan Facility will not sit on the Council's balance sheet as debt. The Council has relied on section 1 of the Localism Act 2011 to allow it to have entered into the Direct Agreement, to have granted the legal charge and) completed the loan agreement with Homes England .as set out in the DPR dated 25 March 2020.

5.4.4. The authority to approve and enter into the legal documentation as delegated to the Chief Executive by Housing and Growth Committee on 16 March 2020 and 6 July 2020.

5.5 Risk Management

5.5.1 As set out in progress update to the Housing and Growth Committee on 24 November 2020.

5.5.2 Homes Building Fund - It is market norm for infrastructure loans to be secured against land (but in this case, the land is owned by the Council and not by the developer (i.e. BXS JVLP)). 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 have worked with Homes England to put in place the framework in the Direct Agreement 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.

5.6 Equalities and Diversity

5.6.1 As set out in the report to the Housing and Growth Committee, 24 November 2020.

5.7 Consultation and Engagement

5.7.1 As set out in the report to the Housing and Growth Committee, 24 November 2020.

6. BACKGROUND PAPERS

7.1 Housing & Growth Committee, 24 November 2020, Brent Cross Cricklewood Update Report

[\(Public Pack\) Brent Cross Cricklewood Update Agenda Supplement for Housing and Growth Committee, 24/11/2020 19:00 \(moderngov.co.uk\).](#)

7.2 Housing & Growth Committee, 6 July 2020, Brent Cross Cricklewood Update Report

<https://barnet.moderngov.co.uk/documents/s59211/Brent%20Cross%20Cricklewood%20Report.pdf>

7.3 Housing & Growth Committee, 16 March 2020, Brent Cross Cricklewood Update Report

<https://barnet.moderngov.co.uk/documents/s58340/BXC%20Housing%20and%20Growth%20update%20Report.pdf>

8. DECISION TAKER'S STATEMENT

8.1 *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:

Signed:

Dated: 10 December 2020



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Approved by Chief Executive

Dated: 10 December 2020



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Approved by Cllr. Richard Cornelius (via email)
Chairman of the Housing &
Growth Committee