



Urgency Committee

5 January 2021

Title	Brent Cross - Acquisition of Brent Cross South Retail Park
Report of	Chief Executive
Wards	Childs Hill, Golders Green and West Hendon
Status	Public (with accompanying Exempt report - Not for publication by virtue of paragraphs 3 and 5 of Schedule 12A of the Local Government Act 1972 as amended (as this relates to commercial and financial affairs of the authority).
Urgent	Yes
Key	Yes
Enclosures	None
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Summary

This report seeks the required approvals for the council to complete the acquisition of the Brent Cross South Retail Park ("the Retail Park") to deliver the comprehensive regeneration of Brent Cross by 29 January 2021. This provides the opportunity to acquire this strategic site within the Brent Cross regeneration scheme much earlier than planned, the benefits of which are explained in section 1.8 of this report

Officers Recommendations

That the Committee:

- 1) Approves the Heads of Terms with Hammerson and Aberdeen Standard appended to the Exempt report to the Committee and to delegate authority to the Chief Executive in consultation with the Chairman of the Housing and Growth Committee and Chief Finance Officer to
 - a) finalise and execute the sale contract and any associated and required documentation on behalf of the council to enable completion of the acquisition by 29 January 2021; and
 - b) to make the required changes to the Capital Financing Requirement and associated indicators to enable the Chief Finance Officer to drawdown the required borrowing to facilitate the purchase from the Public Works' Loans Board.

1. WHY THIS REPORT IS NEEDED

- 1.1 The council's bid to Hammerson and Aberdeen Standard (HASI) to acquire the Brent Cross South Retail Park as amended on 8 December 2020 has now been accepted. This report seeks approval of the current Heads of Terms with HASI as set out within the Exempt report to the Committee and seeks the required delegations to drawdown the required borrowing to facilitate the purchase from the Public Loans Works Board and make the required changes to the Capital Programme to complete this acquisition by 29 January 2021.

Background

- 1.2 As set out in the main report to the Housing and Growth Committee on 24 November 2020, Aberdeen Standard Investments and Hammerson have placed the Brent Cross South Retail Park on the market for sale (paragraph 1.29 of the main report).



- 1.3 Following consultation with the Chairmen of both the Housing and Growth and Policy and Resources Committees, the council instructed CBRE to submit a bid on 18 November 2020.

This reflected the importance of the Retail Park to realising the comprehensive regeneration of Brent Cross.

- 1.4 The bid which was set out in full in the Exempt Addendum report to the November Committee, which was endorsed by the Housing and Growth Committee, subject to approval of any Best and Final Offer and agreed terms by this Committee (or an Urgency Committee, if required).
- 1.5 A Best and Final Offer (BAFO) which included all fees and associated costs, was made on 8 December 2020 updating the bid following detailed discussions between CBRE and JLL (the Seller's agent) Heads of Terms based on this offer are now ready and now agreed, subject to achieving all Council approvals by 5 January and completion of the acquisition by 29 January 2021
- 1.6 The Heads of Terms are attached to the Exempt report for approval by this Committee. These Terms will remain confidential as agreed with the Seller until the exchange of contracts and current lease negotiations with the various commercial tenants within the Retail Park are concluded. Details will be provided to the Housing and Growth Committee in due course subject to the agreement of the Seller, and the performance of the Retail Park will be closely monitored as part of the Brent Cross quarterly reporting to the Housing and Growth Committee going forward.
- 1.7 Whilst this bid has not gone through the internal council Capital Strategy Board process, it is within the parameters of the conditions endorsed by the Housing and Growth Committee on 24 November 2020 as set out in the exempt report (paragraph 1.5) and was reviewed by the Council's Senior Management team (including the Chief Executive and Chief Finance Officer) alongside the Leader and the Chairman of Housing and Growth prior to being made. Timing for completion is as follows: the council would secure all its approvals by 5 January 2021 with PWLB funds to be drawn down upon exchange of contracts that occurs no later than 15 January 2021 and enables completion 10 working days thereafter, so no later than Friday 29th January 2021. Hammerson's Board Approval and Aberdeen Standard Investment Committee and Trust Board approval to the transaction were provided on 21 December 2020.
- 1.8 The acquisition is being progressed on the basis that the council and its advisors are confident that:
 - The acquisition secures the long term planned use of the site to deliver the comprehensive regeneration of Brent Cross in accordance with the council's corporate plan primarily. The income stream associated with the short-term management of the site to regeneration are sufficient to ensure a benefit to the General Fund.
 - It reflects the commitment by the council to the delivery of the comprehensive regeneration and secures land through private treaty in the first instance rather than progressing through compulsory purchase. This has benefits in terms of enabling development to come forward alongside avoiding a lengthy and costly legal process.
 - This commercial opportunity is underwritten by a thorough understanding of regeneration opportunities having regard to the existing s73 permission and s106 requirements.

- The financial model includes the costs associated with running the retail park and all associated freeholder costs.
- The council will put in place appropriate resources internally supplemented with external property management expertise as required to provide good proactive asset management of the Park, and ensure appropriate management of the risks associated with the current economic market conditions and changing retail market.
- There is no gap or negative impact on income on General Fund – Extensive financial modelling has been undertaken by CBRE and the LBB finance team to confirm that this acquisition will generate sufficient return to cover the council’s borrowing and holding costs over the next five years, having regard to assumptions and sensitivity testing to reflect current market economic conditions changing retail market. This will be monitored monthly as part of the regular reporting going forward.
- Risk mitigation plans are in place and will be regularly reviewed to address risks associated with current market conditions (including the changing retail market) or delay incorporating the Retail Park in 2025. This will include an exit strategy should the Retail Park not be included within BXS by year 5 and early council indicators suggest that this acquisition may start to have a negative impact on the General Fund. Full consideration has been given (and will continue to be given) to the attractive location of this accessible retail park adjacent to the North London catchment, existing tenant mix, market conditions and development potential.
- Completion of Full Legal and Property Due Diligence. Significant due diligence has already been undertaken by CBRE, the council’s strategic property advisors and GWLG as well as internally within the council to inform the bid made and put in place the required risk mitigation strategies. As aforementioned, this bid was made on the basis of a thorough understanding of regeneration opportunities having regard to the existing s73 permission and s106 requirements alongside market conditions and development potential. The council and its advisors now have access to the detailed deal room and the next stage of legal, planning and technical due diligence is underway. This will continue over the Christmas period and an update will be provided to the Committee on 5 January 2020 including any issues/impact arising from the conclusion of the due diligence on the purchase price/agreed Heads of Terms.
- That the transaction will be treated as a Transfer of a Going Concern (TOGC) such that no VAT will be paid on the purchase price providing both parties have complied with HMRC rules to comply with TOGC provisions.

2. REASONS FOR RECOMMENDATIONS

- 2.1 To continue the delivery of the comprehensive regeneration of Brent Cross and to secure land through private treaty in the first instance

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The council could have not submitted a bid. However, this was rejected given the importance of this site to realising the comprehensive regeneration of the Brent Cross area.

4. POST DECISION IMPLEMENTATION

4.1 Council officers together with the council's legal and property advisors will complete the due diligence exercise and agree the contractual documentation with the Retail Park seller and BXS for approval by the Chief Executive as set out in the recommendations and put in place the required structures to facilitate this acquisition by 29 January 2021.

5. RESOURCES (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.1 This acquisition will be financed using borrowing from Public Works Loan Board ("PWLB") Borrowing costs will be based on the current PWLB certainty rate of interest at 1.58% (as at 22/12/2020) fixed for 50 years and the required MRP payment at 2% per annum to ensure provision is made to repay the loan on the expiry of the term. An application to draw down funds will be made as set out in the recommendations following the Urgency Committee, subject to approval by this Committee to proceed.

5.2 CBRE and LBB Finance have undertaken the required financial modelling and sensitivity analysis to understand the impact on the General Fund assuming that the asset will be incorporated into the Brent Cross South scheme in year 5. The modelling at the purchase price assumes a total net annual income based on analysis of the marketing schedule provided by the seller's agent, JLL and confirms that the passing income is sufficient to generate a return that covers borrowing (interest + MRP) and holdings costs with a beneficial positive impact on the General Fund.

5.3 Social Value

5.3.1 As set out in previous reports and sections within this report, the Brent Cross programme will secure wider social, economic and environmental benefits.

5.4 Legal and Constitutional References

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

5.4.2 The council's 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 interpreted 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.

5.4.4 The Constitution- Article 7.5 – Responsibility for Functions- states that the Policy and Resources Committee responsibilities include to be responsible for strategic policy, finance and corporate risk management including recommending: Capital and Revenue

Budget (including all fees and charges); Medium Term Financial Strategy; and Corporate Plan to Full Council , Finance including Treasury management, virements and effective use of resources.

5.4.5 Article 10 – Decision Making of the Council’s Constitution notes that if a decision is required as a matter of urgency, an Urgency Committee comprising of the Leader, the Deputy Leader and the Leader of the Opposition will be called. This decision is considered urgent as a quick decision is a condition of the agreement. The Chairman of the relevant Committee has been consulted, as required by Article 10. In Article 7, the terms of reference of the Urgency Committee include “To consider any item of business which needs a decision as a matter of urgency and where a meeting of the relevant Committee is not scheduled to take place within the time period within which the decision is required.”

5.4.6 The Council’s Constitution- Article 7.5 – states that the remit of the Urgency Committee is to consider any item of business which needs a decision as a matter of urgency and where a meeting of the relevant committee is not scheduled to take place within the time period within which the decision is required.

5.5 Risk Management

5.5.1 The key risk associated with this bid is ensuring that the acquisition will have no impact on the General Fund and that it is incorporated into the BXS Joint Venture by December 2025 and that the council’s acquisition and holding costs are covered.

5.5.2 This acquisition is being made on the basis of a thorough understanding of regeneration opportunities having regard to the existing s73 permission and s106 requirements alongside market conditions and development potential. Significant due diligence has already been undertaken by the council and its advisors, particularly on the finance modelling, existing tenant mix and re-development strategy to inform the purchase price and ensure that there is not a negative impact on the General Fund during the holding period. The council and its advisors now have access to the detailed deal room and the next stage of legal, planning and technical due diligence is underway. This will continue over the Christmas period and an update will be provided to the Committee on 5 January 2020.

5.5.3 However, risks will remain post acquisition associated with market conditions (including Covid and Brexit) that will impact on the changing retail market as well as on the development progress on the Brent Cross Town scheme and timing for inclusion within the Brent Cross Town scheme, in the event that the council and BXS agree the Implementation Plan. The council is putting in required structures in place at the outset to enable it to manage the Retail Park against these variables to ensure that the council will secure the required returns so that there will be no gap or negative impact on the General Fund.

5.5.4 As explained in the risk management sections in the quarterly updates to the Housing and Growth and Finance Performance and Contracts Committee, one of the most important control mechanisms for the council is to employ experienced staff. As explained in paragraph 1.8, the council will put in place appropriate resources internally supplemented with external property management expertise as required to provide good proactive asset management of the Park in addition to retaining CBRE and GWLG as its legal advisors on the Park. This will ensure appropriate management of the risks based on up to date

knowledge on the current economic market conditions and changing retail market.

- 5.5.5 The report below addresses the key risks and briefly summarises the strategies currently being pursued.

Retail Market Risk

- 5.5.6 Whilst it is important to note that the asset is a high quality, fit for purpose retail park serving the large and diverse catchment of North London, benefitting from high frequency shopper visits and limited immediate competition, with sustained supply and demand dynamics, the retail market is changing and the changes need to be closely monitored.
- 5.5.7 CBRE has advised the council that in terms of footfall, retail parks have significantly outperformed other retail asset classes because of their convenience, flexibility and speed of adaptation. Their ability to evolve and offer a wider convenience and necessity, based line up and improved amenity, together with free parking and the growth of click & collect have been key to their resilience. The closure of non-essential retail stores during lockdowns has put severe pressure on retailers' revenues and will continue to affect their performance in 2021. The council working with its advisors will be continually monitoring the wider market and retail market conditions, including vacancy rates across the out of town sector, although it is recognised that these remain low compared to other retail sub-sectors. The rise in online penetration levels driven by the UK-wide lockdown is acknowledged as part of the due diligence process. This will continue throughout 2021 as retailers continue to invest in their online platforms and move a larger proportion of their sales online. CBRE forecasts that online penetration will reach 26% in 2021 and 30% in 2025. This one-off step change will be monitored to ensure that it is reflected in the risk mitigation strategies being pursued.
- 5.5.8 Overall, CBRE are of the view that the fundamentals that had revived investor interest in the final few months of 2020, will draw momentum in 2021. Pricing of dominant, fit for purpose retail warehouse assets are increasingly being seen as attractive and CBRE expect this view to continue and gain strength, leading to more investor interest and depth in the capital markets. Assets that are dominant or convenient will be at the top of investor's wish lists, and a foodstore on or adjacent to the scheme will provide an added degree of comfort. There is strong demand for assets in London and South-East deemed best in class, fit for purpose assets with underlying alternative use value.
- 5.5.9 The occupier line-up within the Retail Park is a mixture of mid-market, discount fashion, sportswear and home furniture. The asset has experienced one recent tenant failure, through the administration of Oak Furniture Land. Both Next and TK Maxx have recently completed lease renewals, which is a strong endorsement of the retail park's quality, prominence and sales performance. Sports Direct are at an advanced stage of negotiations to renew their lease and CBRE expect this to complete imminently. The asset benefits from sustained demand and limited supply in the locality and we note that Unit F1 (former Oak Furniture Land) has quickly generated an offer from a high-end brand.
- 5.5.10 Financial/Borrowing Risks: As set out in paragraph 5.2, CBRE and LBB Finance have undertaken the required financial modelling and sensitivity analysis to understand the impact on the General Fund. The modelling confirms that the passing income is sufficient to generate a return that covers borrowing (interest + MRP) and holdings costs with a positive impact on the General Fund. Based on advice from CBRE, there is no reason that this level of income / positive impact would not continue beyond year 5 subject to good proactive asset management of the estate, should the council with BXS JVLP decide to include the

park within the scheme at a later date.

5.5.11 To mitigate interest rate and borrowing risks, the council is working towards a capital receipt in excess of the purchase price with BXS JVLP (if it decides to purchase the Property). CBRE has confirmed that working progress has confirmed that this is achievable. The capital receipt will mitigate the PWLB certainty rate dropping, as the receipt will be used as an alternative funding stream in the future capital programme thereby reducing the need to incur external borrowing whilst still maintaining a positive impact on the General Fund. It must be noted increases in the interest rate will result in further opportunity gains due to the funds being available and in hand. The council is also working with BXS to develop the Implementation Plan to include the Retail Park within the wider scheme to achieve the ambitions of the comprehensive regeneration programme. In the event the council experiences market risk or that early council indicators suggest that this acquisition may start to have a negative impact on the General Fund there is the option of a future sale.

5.6 Equalities and Diversity

5.6.1 Under the Equality Act 2010 ("EA 2010), the Council must have due regard to the need to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- b) advance equality of opportunity between those with a protected characteristic and those without;
- c) promote good relations between those with a protected characteristic and those without.

The 'protected characteristics' referred to are; age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. It also covers marriage and civil partnership with regards to eliminating discrimination.

5.5.2 Equalities Impact Assessments will be carried out as required to ensure that the council's obligations under the EA 2010 are adhered to and, so far as appropriate, any findings taken into account so far as it is both appropriate and/or lawfully required in relation to any further development related to the proposed site to be acquired.

5.7 Corporate Parenting

5.7.1 In line with the Children and Social Work Act 2017, the council has a duty to consider Corporate Parenting Principles in decision-making across the council. There are no implications for Corporate Parenting in relation to this report.

6. Consultation and Engagement

6.1 The Chairman of the Housing & Growth Committee and Leader (Chairman of the Urgency Committee) have been consulted and have agreed that it is appropriate for this decision to be taken by the Urgency Committee.

7. BACKGROUND PAPERS

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

<https://barnet.moderngov.co.uk/documents/b35659/Brent%20Cross%20Cricklewood%20Update%2024th-Nov-2020%2019.00%20Housing%20and%20Growth%20Committee.pdf?T=9>