

	<p align="center">CHIEF OFFICER IN CONSULTATION WITH COMMITTEE CHAIRMAN AND CHIEF FINANCIAL OFFICIER DELEGATED POWERS REPORT 27 January 2021</p>
<p align="center">Title</p>	<p align="center">Brent Cross Cricklewood –Acquisition of Brent Cross South Retail Park</p>
<p align="center">Report of</p>	<p>Chief Executive</p>
<p align="center">Wards</p>	<p>Childs Hill, Golders Green and West Hendon</p>
<p align="center">Status</p>	<p>Public with accompanying Exempt report (Not for publication by virtue of paragraphs 3 and 5 of Schedule 12A of the Local Government Act 1972 as amended as this relates to information of a financial nature and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings).</p>
<p align="center">Enclosures</p>	<p>Appendix 1 – Land Transfer Plan</p>
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Summary

This report authorises the council to conclude the documentation required to effect the acquisition of the Brent Cross South Retail Park (“the Site”) from Aberdeen Standard Investments and Hammerson to deliver the comprehensive regeneration of Brent Cross.

Decisions

That the Chief Executive authorises the completion of the documents for the acquisition of the Brent Cross South Retail Park and associated documentation as listed in paragraph 1.2 of this report (including any other ancillary documentation as required) by the Council and BX Holdings

1. WHY THIS REPORT IS NEEDED

1.1 This report authorises the completion of the legal documentation in relation to the acquisition of Brent Cross South Retail Park (“the Site”) from Hammerson and Aberdeen Standard Investments as identified on the plan attached following the approvals provided by the Urgency Committee on 5 January 2021 and the decision taken as referred to at paragraph 1.10 of this report.

1.2 The documents comprise:

Property Documents for Brent South Retail Park

1. Contract
2. Transfer (TP1)
3. Deed of Assignment of Rent Arrears.
4. Deed of Assignment of Maintenance Contracts Seller
5. Deed of Assignment of Construction Documents
6. Deed of Covenant LBB
7. Notice as originally set out in HM Customs & Excise Business Brief 10/96
8. Trust Deed

Property Documents for Red Land and other parts of the development

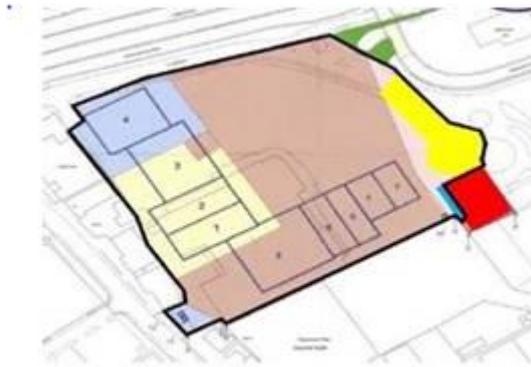
1. Project Agreement Variation
2. Homes England Consent Letter
3. Related Consent Letter
4. Red Land Transfer
5. Supplemental Legal Charge
6. Council Acquired Land Deed of Covenant
7. FAPD Side Letter

1.3 Aberdeen Standard Investments and Hammerson placed the Brent Cross South Retail Park on the market in November 2020. Given its strategic position within the Brent Cross scheme and the need to ensure delivery of comprehensive regeneration and following an assessment of the commercial viability of the asset, the council approved the making of a bid for the property. A Best and Final Offer (BAFO) which included all fees and associated costs, was made on 8 December updating the bid following detailed discussions between CBRE and JLL (the Seller’s agent).

1.4 The Site price is based on a gross site area of 7.4 acres (net developable area of 5.8 acres) and a built area of 96,000 sq ft. The gross area includes land that is included within the CPO1 Order area and may be needed for highways purposes.

1.5 The proposed extent of the disposal to the Council includes the land shown edged black and shaded red on Figure 1. The Land Transfer Plan for the Retail Park is attached at appendix 1 showing the Site to be acquired edged blue.

1.6



- 1.7 This was approved by the Council's Urgency Committee on 5 January 2021, who also delegated the decision to proceed and execute the contract to the Chief Executive in consultation with Chairman of the Housing and Growth Committee subject to completion of the due diligence and any post exchange conditions within the contract documentation.
- 1.8 The full recommendation can be viewed on the Urgency Committee paper linked below.
- Link to Urgency Committee paper – 5 January 2021
<https://barnet.moderngov.co.uk/documents/s62641/Brent%20Cross%20South%20Retail%20Park%20Acquisition%20Report.pdf>
- 1.9 The financial model has been further updated since the Urgency Committee to reflect the due diligence undertaken by the council, CBRE and GWLG teams and additional resource requirements to enable effective running of the Park. These costs will be funded through the Retail Park Service Charge and for the purpose of the financial modelling income is net of the Service Charge to account for this appropriately.
- 1.10 Whilst the Retail Park sits within the Brent Cross programme, it will be managed by the council's Estates team supplemented by external property management support as required. In this regard the council has secured specialist additional part time resource to bolster the council's internal resources and will continue to employ the incumbent manager Workman. The contract with Workman is currently being put in place.
- 1.11 The due diligence process is now complete. This has been reported, alongside the sales contract terms, to the council's Senior Management Team comprising the Chief Executive, Deputy Chief Executive, Chief Finance Officer, Director of Place and the Leader of the council and the Chairmen of the Housing and Growth Committee and the Financial Performance and Contracts Committee. This review was held on 19 January 2021 and confirmed the decision to proceed.
- 1.12 The contract for the Retail Park sale excludes an area of car park that was already subject to a land transfer from Hammerson and Aberdeen Standard under the terms of the Property Development Agreement dated 3rd March 2015. This area of land (known as the Red Land and identified in Figure 1 above and on the Plan) will be transferred to the council simultaneously with the Retail Park. The land is to be transferred free from any rights the tenants of the Retail Park may have. It is to be charged to Homes England as the Council is required to do under the terms of the legal charge that the Council entered into with Homes England on 30 March 2020. The Red Land will form part of the

Council Acquired Land in the Project Agreement and accordingly a Council Acquired Land Deed of Covenant will be entered into on transfer.

- 1.13 The acquisition of the Retail Park is predicated on bringing the Retail Park into Brent Cross Town to achieve comprehensive regeneration as explained in the reports to the Housing and Growth Committee as well as the Urgency Committee.
- 1.14 To facilitate this, the Urgency Committee approved and delegated to the Chief Executive in consultation with the Chairman of the Housing and Growth Committee to finalise the Side Letter agreement and any contract variations or other project documentation required acting in the best interest of the Council with Brent Cross South JVLP as a result of this acquisition; and endorsed that council officers continue to work with Brent Cross South to vary the Business Plan to agree the basis on which the council / BXT JVLP will incorporate the Retail Park into a Phase Proposal for BXT to achieve the ambitions of comprehensive regeneration.
- 1.15 The Side Agreement to vary the Project Agreement is now agreed and will be completed simultaneously on exchange of the Retail Park legal documentation.
- 1.16 Officers are at present working with BXT to agree the brief and finalise the programme. It is anticipated the variation to the Business Plan will take 6 months to complete and will be reported to the Housing and Growth Committee in September later this year. Meanwhile Members will be able to engage in the process through the Members Working Group.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The comprehensive regeneration of Brent Cross is a long-standing objective of the council and a key regeneration priority of the Mayor of London.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The council could not progress the bid and exchange. 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 Completion of the legal documentation and acquisition.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 As set out in the report to the Housing and Growth Committee on 6 July 2020.
<https://barnet.moderngov.co.uk/documents/s58340/BXC%20Housing%20and%20Growth%20update%20Report.pdf>

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

- 5.2.1 The BX Retail Park is now accounted for in the Capital Programme and is being included

within the report to the Policy and Resources Committee in February 2021.

5.2.2 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 1.52% (as at 15/01/2021) 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 immediately on exchange of contracts.

5.2.3 CBRE and LBB Finance have updated the 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.

Option to Tax

5.2.4 The transaction is being 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. The council's finance team have submitted the required Opt to Tax forms to HMRC, the effective date being 5 January 2021 in line with the Urgency Committee approval. The option, once confirmed by HMRC will be recorded with the council's VAT Accountant to enable the Council's Opt to Tax register to be maintained.

5.2.5 It is noted that the decision to opt to tax the land ensures all supplies made in relation to this interest will normally be standard rated. In addition, the Council would be able to recover any VAT incurred in making those supplies. The decision also reduces the risk of the Council breaching the 5% partial exemption threshold for exempt supplies.

Insurance

5.2.6 The council has put in place the required buildings insurance with Zurich Municipal Insurance for the Retail Park.

HMG Grant Agreement

5.2.7 This Site falls outside of the Grant Agreement with HM Government in respect of the Brent Cross West Station and Critical Infrastructure works. This has been confirmed by the Ministry of Housing, Communities and Local Government.

5.3 Social Value

5.3.1 As set out in reports to the Housing and Growth Committee, the Brent Cross programme will secure wider social, economic and environmental benefits

5.4 Legal and Constitutional References

5.4.1 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.

- 5.4.2 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.
- 5.4.3 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.”
- 5.4.4 The Council’s Constitution- Article 7.5 – states that if a decision on an issue 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. The Chairman of the relevant Committee should be consulted.

5.5 Risk Management

- 5.5.1 The key risk associated with the acquisition of the Retail Park is ensuring that the acquisition will have no impact on the General Fund and that it is incorporated into the BXT Joint Venture by December 2025 and that the council’s acquisition and holding costs are covered. 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 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.
- 5.5.2 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 of BXT and the timing for inclusion within the scheme, in the event that the council and BXT agree the Implementation Plan. The council is putting in place the required structures to enable it to manage the Retail Park against these short-term 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.
- 5.5.3 As explained above in the report to the Urgency Committee, one of the most important control mechanisms for the council is to employ experienced staff. The council is putting in place appropriate internal resources supplemented by external property management expertise as required to provide good proactive asset management of the Park in addition to retaining CBRE and GWLG as its advisors. This will ensure appropriate management of the risks based on up to date knowledge on the current economic market conditions and changing retail market.

- 5.5.4 The report below addresses other key risks and briefly summarises the strategies currently being pursued to mitigate these risks:
- 5.5.5 Retail Market Risk - 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.
- 5.5.6 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.
- 5.5.7 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 the South-East deemed best in class, fit for purpose assets with underlying alternative use value.
- 5.5.8 Financial/Borrowing Risks: CBRE and LBB Finance have undertaken the required financial modelling and sensitivity analysis to understand the impact on the General Fund. The modelling undertaken to support the bid confirms that the passing income is sufficient to generate a return that covers borrowing (interest + MRP) and holdings costs.
- 5.5.9 To mitigate interest rate and borrowing risks, the council is working towards a capital receipt in excess of the purchase price with BXT 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 BXT 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

5.5.10 As set out in the report to the Housing and Growth Committee on 25 January 2021.

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 report to the Housing and Growth Committee on 25 January 2021.

5. BACKGROUND PAPERS

As set out within this report.

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.*

Signed:

Chief Officer: John Hooton

Dated: 28th January 2021

**Signed. Cllr. Richard Cornelius
Chairman of Housing & Growth Committee**

28th January 2021

Date:.....