



**CHIEF OFFICER IN CONSULTATION
WITH COMMITTEE CHAIRMAN
DELEGATED POWERS REPORT
25 March 2020**

Title	Brent Cross South Legal Documentation
Report of	Deputy Chief Executive in consultation with Housing and Growth Committee Chairman
Wards	Childs Hill, Golders Green and West Hendon
Status	Public with Exempt report (Not for publication by virtue of paragraphs 3 and 5 of Schedule 12A of the Local Government Act 1972 as amended as this relates to information of a financial nature and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).
Urgent	Yes
Key	Yes
Enclosures	None
Officer Contact Details	<p>Cath Shaw, Deputy Chief Executive, cath.shaw@barnet.gov.uk</p> <p>Stephen McDonald, Director of Growth Stephen.McDonald@Barnet.gov.uk</p> <p>Karen Mercer, Programme Director Re, Karen.Mercer@barnet.gov.uk, 0208 359 7563</p>

Summary

To execute a) Deed of Variations to Brent Cross South (BXS) Project Agreement and Corporate Documents (Limited Partnership Deed, Shareholders' Agreement, DMIDA, Collateral Warranty and Delegated Warranty) and ancillary documents b) Homes England

Documents (Facility Agreement, Direct Agreement, Deed of Indemnity and Counter Indemnity, Legal Charge and Deed of Subordination).

Decisions

- 1) To authorise the execution of a Deed of Variation to the Brent Cross South (BXS) Project Agreement and Corporate Documents (Limited Partnership Deed, Shareholders' Agreement, Collateral Warranty and Delegation Warranty) and ancillary documents;
- 2) To authorise the execution of a Homes England Loan Facility Agreement with BXS and Homes England and the Direct Agreement between Homes England and the Council and ancillary documents including Deed of Indemnity and Counter Indemnity, Legal Charge and Deed of Subordination.

A full list of documents for sealing and/or signing by the Council is attached at Appendix 1.

1. WHY THIS REPORT IS NEEDED

- 1.1 As reported to the Housing and Growth Committee (H&G, formerly Assets, Regeneration and Growth Committee) on 27 January and 16 March 2020, the council and Argent Related were finalising the amendments to the project legal documentation to take account of the consequential changes resulting from 1) the Revised Funding and Delivery Strategy agreed by the Housing and Growth Committee on 27 November 2018 and 2) the Homes Building Fund Loan to fund infrastructure and accelerate housing as agreed in principle by the Committee on 13 June 2019.
- 1.2 This report now confirms that Deputy Chief Executive, having consulted with the Chairman of the Housing and Growth Committee has finalised 1) 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) and authorises their execution so that the Brent Cross South (BXS) can proceed.
- 1.3 The documents are summarised below.
A) To authorise the execution of a Deed of Variation to Brent Cross South (BXS) Project Agreement and Corporate Documents (Limited Partnership Deed, Shareholders' Agreement, Collateral Warranty and Delegation Warranty)
- 1.4 The Revised Funding and Delivery Strategy was required due to the decision by Hammerson and Aberdeen Standard Investments (HASI) to defer the expansion of the Brent Cross Shopping Centre and delivery of the critical infrastructure in July 2018. It was approved by the Housing and Growth Committee on 27 November 2018.

- 1.5 This Committee also authorised the Deputy Chief Executive in 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; and b) the BXS Project Agreement and required and associated legal documentation. [Link to H&G 27 Nov 2018 here.](#)
- 1.6 The BXN legal documentation was completed on 3 May 2019.
- 1.7 On 26 November 2019 the Housing and Growth Committee authorised 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. [Link to H&G 26 Nov 2019 here](#)
- 1.8 On 19 February 2020, the Policy and Resources Committee approved the revised BXS financial returns mechanism as negotiated by the council and its advisors CBRE and Argent Related to reflect the changing risk profile for both parties from the HE Loan Facility as summarised below. It also authorised the Deputy Chief Executive in consultation with the Chairman of the Housing and Growth Committee to amend the financial returns mechanism within the BXS legal documentation on the basis set out in paragraph 2.2 of the report and paragraph 1.3 in the exempt report when finalising and agreeing the detail of the consequential changes to the BXS legal documentation as approved by the Housing and Growth Committee (formerly Assets, Regeneration and Growth Committee) on 27 November 2018. [Link to P&R 19 Feb 2020 here.](#)
- 1.9 On 16 March 2020 the Housing and Growth Committee authorised delegation to the Deputy Chief Executive in consultation with the Chair of this Committee to finalise and complete; a) the surrender and regrant of the former Toys R Us lease for a longer term and to widen the existing user restriction (which element will be completed after the documents listed in Appendix 1 to this report); b) the consequential amendments required to the BXS legal documentation to ensure that the site forms part of the BXS scheme; c) and the Direct Agreement between the council and Lender”
- 1.10 The BXS project legal documentation was signed on 16 July 2016. A summary of the documentation, including the corporate structure of the joint venture partnership was included with the report to the Housing and Growth (formerly Assets, Regeneration and Growth Committee on 17 March 2016. [Link to H&G 17 March 2016 here.](#)
- 1.11 The documents comprising the Deed of Variation to Brent Cross South (BXS) Project Agreement and Corporate Documents (Limited Partnership Deed, Shareholders' Agreement, Collateral Warranty and Delegation Warranty) plus ancillary documents have now been finalised by the Deputy Chief Executive in consultation with the Chairman of the Housing and Growth Committee and now ready for completion, reflecting:
- a) the revised BXC delivery and funding strategy to ensure the delivery of the Thameslink station and Brent Cross South ahead of the BXN;
 - b) that BXS will now deliver the improvements to Claremont Park and the Electricity Sub Station;

- c) scheme developments in relation to the Thameslink Station and Brent Cross South. This includes the revisions to the Business Plan and Revised Phase Proposal;
- d) the Homes England Loan Facility as detailed below;
- e) the acquisition by an Argent Related entity of the former Toys R Us building to ensure that it will be brought forward as part of the BXS in due course
- f) the revised returns mechanism to reflect the change in risk profile for the council as approved by the Policy and Resources Committee;
- g) that, in addition to infrastructure licences, there are additional different types of licences which may be granted to Dev Co (whether by the Council or the Management SPV) under the Project Agreement to permit Dev Co to carry out infrastructure works;
- h) that the Primary Substation works and conduit connection works (in relation to BXN) will be done under a slightly different procurement route than envisaged by the standard DMIDA provisions and that Dev Co will comply with the agreed position in the PA in relation to those works.

B) To authorise the execution of Homes England Loan Facility Agreement with BXS and Homes England and the Direct Agreement between Homes England and the Council and ancillary documents including Deed of Indemnity and Counter Indemnity, Legal Charge and Deed of Subordination).

1.12 On 13 June 2019, the Housing and Growth Committee approved:

- *the provision of its land within BXC as security for the Homes Building Fund Loan subject to Homes England entering into the Direct Agreement within the parameters explained in that report in paragraph 1.15.*
- *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; and delegated authority to the Chief Executive in consultation with the Chairman of this Committee 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. [Link to H&G 13 June 2019 here](#)*

1.13 BXS JVLP has now finalised the loan facility from the Homes Building Fund (HBF) with Homes England 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 4,058 homes, office, retail and leisure, hotel rooms, student homes and community and educational facilities.

1.14 As reported to the H&G Committee in November 2018 and June 2019, the HBF funding will help accelerate the delivery of homes and will create a better place more quickly by bringing forward the delivery of the High Street connecting into the new station, public parks and schools.

Loan Facility Agreement

1.15 The loan facility agreement is directly between BXS JVLP and Homes England. The council is party in its capacity as the provider of its land holdings as security and has provided

assurances on land title and environmental conditions on the land. The loan total commitment is £148,000,000 plus any capitalised interest under the Agreement. The termination date of the loan is 31 March 2031, subject to a single extension request that can be made at Homes England's absolute discretion.

- 1.16 The Facility Agreement sets out various Events of Default. The Events of Default are bespoke and Borrower friendly, in that there are separate regimes for Curable Events of Default and Non-Curable Events of Default. In summary, the Curable Events of Default, if capable of remedy (or is remedied) and where the Event of Default is capable of remedy, JVLP submits a plan to Homes England to remedy and/or mitigate the effects of that Curable Event of Default). Homes England can request such a plan to be delivered within 30 days of such request. This is a Borrower friendly position and indirectly benefits the Council given that JVLP has a longer than usual grace period to fix a remediable Event of Default.
- 1.17 Certain of the Events of Defaults apply to the Transaction Obligors and therefore capture the Council Limited Partner and the Council. A breach of these that resulted in a loss would expose the Council to liability to JVLP and/or Homes England.

Direct Agreement

- 1.18 Homes England and the Council will enter into a direct agreement to provide the Council and Homes England the opportunity to a secure an alternative delivery plan in the event of a default under the Homes England Facility in order to prevent the sale of Council land under the legal charge. Any Recovery Plan will involve the public-sector partners across HM Government to agree the way forward.
- 1.19 The parties have six months to agree a Recovery Plan with the objective of securing a successful regeneration project and the repayment of their respective investments in the project in line with the approval given by the H&G Committee. If the Recovery Plan is not agreed or its implementation is not successful then Homes England can either acquire Argent Related's interest in JVLP or enforce the Legal Charge over the Council's Land.

Deed of Indemnity and Counter Indemnity

- 1.20 In order for the Council to provide the Legal Charge in support of the interest rate to be charged pursuant to the Homes England Facility, the Council must be indemnified in respect of losses which it incurs should Homes England enforce the legal charge leading to the sale of Council's land.

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 None in the context of this report. These legal documents are required to ensure the delivery of the regeneration proposals. Failure to approve the DPR and sign the legal documentation will jeopardise the Brent Cross Cricklewood project.

4. POST DECISION IMPLEMENTATION

1.1 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 Housing and Growth Committee.

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

5.1.1 As set out in the report to the Policy and Resources Committee on 19 February and Housing and Growth Committee on 16 March 2020.

5.1.2 As previously reported, the council has provided funding of £23m to the BXS JVLP to provide infrastructure to facilitate the development of the southern area. BXS JVLP will repay using the HBF facility once in receipt of the first drawdown.

5.1.3 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 HE Loan will be passed to BXS Limited Partnership for which Argent Related are the only equity funding partner. Accordingly, Argent Related recognises 99.99% of the results of BXS Limited Partnership in the consolidated statements of Argent Related Limited Partnership.

Social Value

5.1.4 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 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 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.

53 Risk Management

- 5.3.1 As set out in progress update to the Housing and Growth Committee on 16 March 2020.
- 5.3.2 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 a 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.
- 5.3.3 These documents alongside the updated Business Plan and the revised Phase Proposal were prepared prior to the changed environment due to COVID-19. All parties are aware of this risk and its likely economic implications but are nevertheless re incentivised to work together in respect of any amendments which may be required in the future to deliver the BXS scheme. The Council's land value is exposed to changes in the viability of the scheme as a result of increased costs and / or a deterioration in the UK property market, as is the ability for Argent Related to realise profit. For that reason, the documentation incorporates viability tests which need to be satisfied for the project to proceed from one stage to the next. In addition, the directors of JVLP and of the development manager have fiduciary duties that they must have regard to, in order to ensure prudent management of investment made in the scheme. Separately, the Council has made provision for the agreement of a recovery plan with Homes England should JVLP not be able to proceed with the scheme.

54 Equalities and Diversity

- 5.4.1 As set out in progress updates to the Housing and Growth Committee.

55 Corporate Parenting

- 5.5.1 None in the context of this report.

56 Consultation and Engagement

BXC Programme wide

- 5.6.1 As set out in progress updates to the Housing and Growth Committee.

6 BACKGROUND PAPERS

- 6.1 As set out within this report.

7 DECISION

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- 2) To authorise the execution of Homes England Loan Facility Agreement with BXS and Homes England and the Direct Agreement between Homes England and the Council and ancillary documents including Deed of Indemnity and Counter Indemnity, Legal Charge and Deed of Subordination).

A full list of all documents for sealing and/or sealing by the Council is attached at Appendix 1.

Chairman Housing and Growth:
Has been consulted

Signed

Chairman Housing and Growth Committee

Date 25 March 2020

Chief Officer:
Decision maker having taken into account the views of the Chairman

Signed

Deputy Chief Executive

Date 24 March 2020

No.	Document	Parties
	Deed of Variation of the Project Agreement	(1) LBB (2) JVLP
	Agreed form of Station Strategy	To be initialled by LBB and JVLP
	Second Amended and Restated Limited Partnership Deed	(1) LBB BX Holdings Limited (2) AR BXS Limited (3) BXS GP (4) Related (5) LBB
	Amended and Restated Shareholders Agreement	(1) AR BXS GP Nominee Limited (2) LBB (3) Related (4) BXS GP
	Deed of termination in respect of May 2019 side letter relating to SIC Financing Agreement	(1) LBB (2) JVLP (acting by BXS GP)
	Deed of Variation of Collateral Warranty to DMIDA	(1) BXS DM (2) LBB (3) Related (4) JVLP (acting by partner its general BXS GP)
	Delegation Warranty in relation to delegated DMIDA services	(1) Argent Related Services Limited (2) JVLP (acting by its general partner BXS GP) (3) LBB (4) ARSL LLP (5) Argent (Property Development) Services LLP
	Deed of Indemnity and Counter Indemnity	(1) LBB (2) JVLP (acting by partner its general BXS GP) (3) Related
	£12.7m (Electricity Substation) Funding Letter	(1) LBB (2) JVLP (acting by partner its general BXS GP)

Deed of Variation of Lease for Claremont Way	(1) LBB (2) JVLP (acting by its general partner BXS GP)	
Variation of CPO2 Indemnity Agreement	(1) LBB (2) JVLP (acting by its general partner BXS GP) (3) Related	
Variation of CPO3 Indemnity Agreement	(1) LBB (2) JVLP (acting by its general partner BXS GP) (3) Related	
Warranty ARUP		
Direct Agreement	(1) LBB (2) Homes and Communities Agency	
Subordination Agreement	(1) JVLP (acting by its general partner BXS GP) (2) BXS GP (3) AR BXS GP (4) AR BXS (5) LBB BX (6) LBB (7) HE	
Loan Facility Agreement	(1) HE (2) JVLP (acting by its general partner BXS GP) (3) LBB	
Council Legal Charge	(1) LBB (2) HE	
LBB BX Holdings Limited – Board Minutes		
Officer's Certificate re: Facility Agreement		

	Notice of Assignment to Related re TOS Licence	LBB to Related
	Notice of Assignment to JVLP (acting by its general partner BXS GP) re TOS Licence	LBB to JVLP
	Notice of Assignment to BXS DM Limited re TOS Licence	LBB to BXS DM
	Notice of Assignment to JVLP (acting by its general partner BXS GP) re Compound Licence	LBB to JVLP
	Notices of Assignment relating to BXS DM Limited re Compound Licence	LBB to BXS DM