	CHIEF OFFICER IN CONSULTATION WITH COMMITTEE CHAIRMAN DELEGATED POWERS REPORT 13 May 2021
Title	Brent Cross South Retail Park – Unit F1 Surrender and New Letting
Report of	Chief Executive in consultation with Housing and Growth Committee Chairman
Wards	Childs Hill, Golders Green and West Hendon
Status	Public with associated Exempt Report. Exempt from publication in accordance with paragraph 3 of Schedule 12A of the 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).
Enclosures	None
Officer Contact Details	Andrew Cadge Estates Team – Asset Manager andrew.cadge@barnet.gov.uk

Summary

Unit F1 (“the Property”) is let on a lease expiring 2nd June 2029 to JB Global Furniture Ltd (trading as Oak Furnitureland), who are in administration and not in occupation. No rent is being paid. The administrator, Deloitte, are seeking to surrender the lease.

Terms have been agreed for a new 10 year lease of the Property to Designer Sofas (BX) Ltd to take effect on the surrender of the current lease.

Decision

1. To authorise that the Chief Executive:
 - (a) sign on behalf of the Council a letter confirming the Surrender by “operation of law” of the JB Global Furniture Ltd Lease (“the Lease”) to effect the formal surrender of the Lease;

(b) confirms and directs that the Council:

(i) completes a new 10 year lease (“New Lease”) on Unit F1 with Designer Sofas (BX) Ltd, and;

(ii) completes a Licence for Alterations with Designer Sofas (BX) Ltd following completion of the New Lease,

on such terms as set out in the attached exempt report and/or otherwise having regard to the best interests of the Council.

1. WHY THIS REPORT IS NEEDED

- 1.1 The Council (LBB) acquired the freehold reversionary interest relating to the Lease on the 5 February 2021. The current tenant, JB Global Furniture Ltd, is in administration and is not paying the rent or service charge due. To enable the Council to regain control of the Property the Council has agreed that this lease needs to be surrendered and the Unit re-let to provide an income.
- 1.2 The Administrators for the Tenant, Deloitte, will surrender the lease via operation of law to enable the re-letting of the unit. This will be done by exchanging letters which need to be signed by both parties in a prescribed form. There is a release for the tenant from all claims under the lease including rent due and so the Council will not be able to make any claim in the administration. However, there is no release by the tenant of the landlord’s covenants in the lease. Given the nature of the obligations and the short amount of time that the Council has been landlord since acquiring the reversionary interest, it is not thought that this is a risk.
- 1.3 A new 10 year lease (“New Lease”) has been agreed with Designer Sofas (BX) Ltd, with a guarantee from Designer Sofas (London) Ltd.
- 1.4 A Licence for Alterations will be entered into by LBB and the new Tenant to document the Tenant’s fit-out works and their reinstatement obligations at the end of the New Lease. This will complete later following submission and approval of Tenant’s fit-out plans.

2. REASONS FOR RECOMMENDATIONS

- 2.1 No rent is being received due to the Tenant being in administration. This Unit needs to be re-let to provide an income in accordance with the financial model referred to in the Delegated Powers Report of 27th January 2021 for the Acquisition of Brent Cross South Retail Park – a link is provided at the end of this report;
- 2.2 Terms have been agreed with Designer Sofas (BX) Ltd for a 10 year Lease with an upwards only rent review after 5 years and as further set out in the accompanying Exempt Report.
- 2.3 LBB acquired the retail park for incorporation into the Brent Cross South Masterplan Regeneration, with on-going asset management to generate income prior to a transfer by way of long lease to Argent Related. Therefore any leasing transactions need to enable LBB/Argent Related to obtain Vacant Possession (VP) when required. The current indication on the earliest date VP could be required is 1st April 2026;

- 2.4 To meet the VP requirement above, LBB has a break on 6 months notice at any time to take effect on, or after, 31st March 2026. The Tenant has an identical break so it can terminate the lease to cease trading when other tenants have left due to the impending redevelopment. These break options can be removed at any time by LBB at its sole discretion, for example if redevelopment is not envisaged prior to the lease expiry in 2031;
- 2.5 The lease will be contracted out of the Security of Tenure provisions of the Landlord and Tenant Act 1954. This means that the Tenant does not have an automatic right to renew the lease upon expiry and will make the process of determination of the lease easier. The Landlord does not have to pay statutory compensation to the Tenant upon termination/expiry either;
- 2.6 A rent guarantee is being provided by Designer Sofas (London) Ltd which is set out in the lease. This gives additional comfort on rent payments being received.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 **Do Nothing.** This is not recommended as there is no income being received due to the Tenant being in administration.
- 3.2 **Continue to re-market Unit.** Occupational demand is not strong for retail park units, in spite of their comparative popularity to shopping centres during the pandemic. An alternative transaction would complete later than the one recommended. This would likely have a negative financial impact.

4. POST DECISION IMPLEMENTATION

- 4.1 The Surrender and new Lease will complete simultaneously;
- 4.2 The managing agents, Workman Partners, will process the documents and invoice the Tenant for all sums due during the lease. Rents received will be transferred to LBB as specified by Finance.

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. [Brent Cross Cricklewood Report.pdf \(modern.gov.co.uk\)](#)
- 5.1.2 In consultation with Argent Related Joint Venture (JV), Regeneration has confirmed that leases can be granted (without Landlord Break Rights) up to 31st March 2026. This meets the current timescale/objectives of the JV.
- 5.2 **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

Current/Revised Income

- 5.2.1 The rent for the new lease has been agreed in line with current market values for leases on similar terms.

5.3 Legal and Constitutional References

- 5.3.1 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.
- 5.3.2 Under the council's Constitution Article 7, the Housing and Growth Committee Terms of reference include responsibility for regeneration strategy and the oversight of major regeneration schemes, asset management, employment strategy, business support and engagement.
- 5.3.3 Chief Officers have delegated authority to make decisions in accordance with the powers delegated (see Article 9) and other Officers under the Schemes of Delegation maintained by Chief Officers and published on the council's website.
- 5.3.4 Article 10.4 provides for Chief Officers, in consultation with Theme Committee Chairmen to make decisions for values between £189,330 and £500,000. Table A within Article 10 shows that this applies to annualised income, rather than total income. This Lease falls within these parameters.

5.4 Insight

- 5.4.1 Retail Warehouse market trends and demand have been considered in making this decision, in consultation with the letting agents.

5.5 Social Value

- 5.5.1 Not applicable

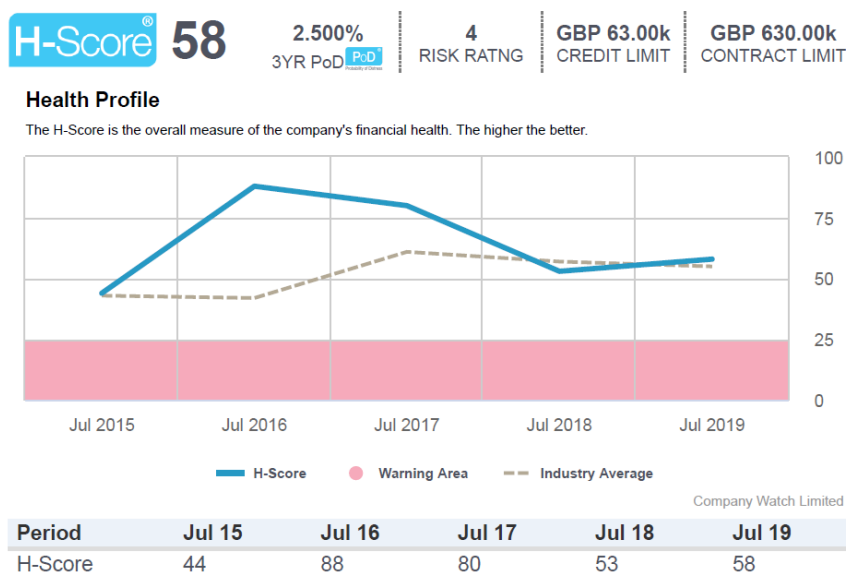
5.6 Risk Management

- 5.6.1 Entering into these surrenders and the new lease minimises the risk to LBB of losing income through having a vacant unit;
- 5.6.2 The Tenant is providing a parent company rent guarantee from Designer Living (London) Ltd. This is included within the lease;
- 5.6.3 The Finance team has undertaken the standard Council financial ratio analysis viewpoint on the guarantor. This includes assessment of the Companywatch Report referred to below. They conclude:

“In summary, the company is operating above the industry average for the time period evaluated with increasing turnover and profits. A risk however is their liquidity position of cash at bank vs liabilities, this signifies a potential future operating cashflow issue based on the current data. The time period also does not take into account the pandemic.”

The Companywatch financial analysis reports:

- £1.4m net worth;
- Health Score – 58/100, slightly higher than industry (retail textiles) average;
- Probability of Distress in next 3 years – 2.5%;
- The company is significantly above the ‘Warning Area’ highlighted in red.



During the Covid closures, the Group/Guarantor has continued to sell on-line and has benefited from increased spend on furniture for the home. A group company of this Tenant/Guarantor has occupied G1 since 2013, so has experienced the trading potential of the park. A new lease on G1 is being entered into simultaneously demonstrating their confidence level - see separate DPR requesting approval for this letting. Approximately £500,000 is being spent by the tenant fitting out F1 and re-fitting G1, which indicates reasonable liquidity to be able to afford this investment. Additionally rent free periods are being granted that will assist cashflow at the start of these leases.

The managing agent, Workman Partners, will monitor rent collection statistics and report to LBB accordingly so that suitable action can be taken to recover any unpaid rent.

5.6.4 Upon expiry/termination, the Tenant has to remove all possessions and leave in a clean and tidy condition. The standard requirement is full reinstatement of alterations, but this lesser obligation has been agreed due to the intention to redevelop and requirement for the Lease to be Outside of the 1954 Act Security of Tenure provisions. Therefore there is a risk and cost to LBB for removing any alterations if re-development does not proceed.

5.7 Equalities and Diversity

5.7.1 Pursuant to the Equality Act 2010, the council and all other organisations exercising public functions on its behalf must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advance equality of opportunity between those with a protected characteristic and those without; promote good relations between those with a protected characteristic and those without. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination.

5.7.2 We have considered whether these proposals will give rise to any issues under the Council's Equalities or Diversity policies and do not consider that there are any such concerns.

5.8 **Corporate Parenting**

5.8.1 Corporate parenting is not applicable.

5.9 **Consultation and Engagement**

5.9.1 Not required.

6. **BACKGROUND PAPERS**

6.1 Urgency Committee – 5th January 2021:
[Brent Cross South Retail Park Acquisition Report.pdf \(modern.gov.co.uk\)](#)

6.2 Housing and Growth Committee – 25th January 2021:
[Brent Cross Update report.pdf \(modern.gov.co.uk\)](#)

6.3 Delegated Powers Report – 27th January 2021, Acquisition of Brent Cross South Retail Park:
[Decision - Brent Cross Cricklewood - Acquisition of Brent Cross South Retail Park \(modern.gov.co.uk\)](#)

Signed: Chairman of the Housing and Growth Committee

Date: 13.05.21

Signed: Chief Executive

Date: 12.05.21

