

Birmingham City Council

Report to the Interim Chief Executive

30 December 2019



Subject: Commonwealth Games – National Express Bus Depot relocation

Report of: Ian MacLeod, Interim Director, Inclusive Growth
Rebecca Hellard, Chief Finance Officer

Relevant Cabinet Member: Cllr Ian Ward, Leader
Cllr Tristan Chatfield, Cabinet Member for Finance and Resources

Relevant O & S Chair(s): Cllr Mariam Khan, Learning, Culture and Physical Activity; Cllr Tahir Ali, Economy and Skills; Cllr Penny Holbrook, Housing and Neighbourhoods, Cllr Sir Albert Bore, Resources.

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Perry Barr, Aston		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

1 Executive Summary

- 1.1 This report seeks the Chief Executive's emergency approval to decisions which need to be approved and implemented ahead of the next scheduled Cabinet meeting, in line with powers set out at para 6.6 of Part B of the Council's constitution, which state that In an emergency an executive decision may be agreed by the Chief Executive following consultation with the Leaders of the Political Groups. Part E: Scheme of Delegations

provides further details, and the approach detailed in section 5 of this report reflects the requirements of the constitution and para 6.9i of Part B of the Council's Constitution immediate decision implementation, "If the interests of the Council are jeopardised unless an executive decision is implemented immediately then the Chief Executive in consultation with the Leader may designate such executive decision as so urgent that its implementation cannot wait until the expiry of the call-in period."

- 1.2 This report updates part of the £492.6m Full Business Case (FBC) approved under delegation on 6th June 2019 to deliver the Perry Barr regeneration scheme and seeks approval for elements relating to the relocation of the National Express bus depot to facilitate Games and legacy development.
- 1.3 Cabinet approved the Outline Business Case for this programme in June 2018 setting out the proposal for the Commonwealth Games Village and the wider Perry Barr regeneration programme. Although decision 2.7 of the June 2018 Cabinet report delegated to the Leader and the Cabinet Member for Finance and Resources, jointly with the then Corporate Director, Economy and the Chief Finance Officer the approval of the Full Business Case and the authorities necessary to deliver the projects contained within the Outline Business Case, given the extent of variation from the FBC figures it is considered that this decision would normally require Cabinet authority.

2 Recommendations

- 2.1 That the Chief Executive, under the powers set out at Para. 6.6 and Para 6.9i of Part B of the Council's constitution:
 - (i) Approves the acquisition by BCC of the existing National Express bus depot as shown edged black on the plan at Appendix 1 to this report (the existing site).
 - (ii) Approves the disposal of land comprising the replacement bus depot to WM Property Holdings Ltd (WMPH) and West Midlands Travel Limited (WMT) (WMPH/WMT) as shown edged black on the plan at Appendix 2 to this report (the replacement site).
 - (iii) Authorises entering into a sale and development funding agreement with an initial cost cap of £12.5m and a long-stop cost cap of £15.5m to enable the delivery of the replacement bus depot.
 - (iv) Authorises the City Solicitor to negotiate, execute and complete all necessary legal documents to give effect to the above recommendations.
 - (v) In consultation with the Leader designates these decisions as so urgent that its implementation cannot wait until the expiry of the call-in period.

3 Background

- 3.1 On 15th August 2017, Cabinet approved the decision for Birmingham to submit a bid to be the Host City for the 2022 Commonwealth Games. As part of supporting the bid, Cabinet also approved the strategy to deliver the Commonwealth Games Athletes' Village (the Village). Cabinet subsequently approved a further report on 26th June 2018 which delegated authority to the then Corporate Director, Economy to negotiate the acquisition of all interests in land to deliver the CWG Village and the wider Perry Barr Regeneration Programme.

- 3.2 The relocation of the National Express Bus Depot is a critical plot necessary to enable the assembly of the site for the non-residential part of the Games-time Village. It is also important to the legacy regeneration of Perry Barr as it unlocks legacy residential development by relocating the non-conforming use to a site which is not suitable for residential development, thereby making more efficient use of land. The site will accommodate around 135 new homes and without it, the delivery of around 100 further homes on the site of the Oscott Gardens student accommodation would be difficult to achieve.
- 3.3 The replacement site comprises:
- (i) Vacant land in BCC freehold ownership.
 - (ii) The existing JobCentre which is in the freehold ownership of BCC and leased to the Department for Works and Pensions. This leasehold interest will be surrendered upon completion of a surrender and relocation agreement.
 - (iii) Leacy MG Ltd, a car parts retail and wholesale business – the property is in freehold ownership of BCC and leased back to the occupier for a period to 21st February 2020.
 - (iv) Anduff Car Wash, which will be vested using CPO powers on 16th March 2020.
 - (v) The George Ellison land, which will be vested using CPO powers on 16th March 2020.
 - (vi) An unregistered strip of land, which will be vested using CPO powers on 16th March 2020.
- 3.4 The relocation of the existing site is contingent upon the relocation of the Aston Lane JobCentre. The delivery on the ground of the new JobCentre scheme is well progressed – the site has been cleared, planning permission has been granted, and procurement is underway. A detailed programme is in place to deliver the new JobCentre, relocate their provision, demolish the existing JobCentre, and develop the new bus depot, to a timescale that enables the Games-time site to be assembled.
- 3.5 To give effect to the series of moves set out above, BCC needs to enter into a sale, relocation and development funding agreement with WMPH and WMT. This agreement covers the following:
- (i) Transfer by BCC of the freehold properties comprising the replacement site described in 3.3 above to WMPH and WMT. In the case of the JobCentre and Leacy's properties the transfer will be subject to the existing leases also described at 3.3.
 - (ii) Transfer by WMPH and WMT of the existing site to BCC, with a temporary leaseback to WMPH and WMT to enable the ongoing operation of the depot at the existing site, expiring on 31st December 2021, with an extended term of 28 February 2022 if delays result from BCC's action or inaction.
 - (iii) A sale and development funding agreement between BCC and WMPH/WMT, the details of which are addressed in Section 4.

- 3.6 With the exception of the sale, relocation and development funding agreement as described in paragraph 3.5 of this report, approvals are either already in place or delegated to the Director, Inclusive Growth to allow the relocation of the Bus Depot to take place. Early approval of the sale, relocation and development funding agreement is necessary to ensure that the relocation can take place within the timescales required for the delivery of the Commonwealth Games.
- 3.7 The costs associated with the delivery of this acquisition, along with the costs for demolition and remediation of the site, were set out in the FBC for the Perry Barr programme approved in June 2019. Additional detail developed since then identifies a significantly increased cost in relation to the construction of the new depot. A revised FBC for the overall programme is being prepared to address this and other changes to the programme, and is anticipated to be considered by Cabinet in February 2020. This report seeking the acquisition of the National Express site is being brought ahead of the revised FBC in order to reduce programme risk given the short time available for the delivery of the overall scheme.
- 3.8 It should be noted that the relocation is not a like-for-like re-provision. The facility at the existing site includes a traditional covered garage, which will not be replicated. However there will be more office and workshop floorspace. The new facility will also be suitable to accommodate Sprint buses.
- 3.9 The details of the legal agreement for sale and development funding between BCC and WMPH/WMT were finalised on Monday 23rd December. This information, including costs, was required to enable the completion of this report. The report could not, therefore have been brought sooner.
- 3.10 The delegation under which the FBC was approved is not considered to be applicable to the decisions requested through this report. As such in the normal course of events this would be a decision for Cabinet. However, awaiting the next Cabinet meeting would result in an unacceptable delay to the programme.
- 3.11 In the unlikely event that the development of the Commonwealth Games Village does not proceed at the Perry Barr site, the relocation of the bus depot will still contribute to site assembly required to facilitate the regeneration programme in the area in line with the vision set out in the Birmingham Development Plan.

4 Options Considered and Recommended Proposal

- 4.1 The use of an Emergency Report has been carefully considered. The options available were as follows:
- 4.1.1 **To utilise the provisions of the constitution to ensure the decisions and actions necessary were not delayed, and that the Council and its partners could continue to deliver in line with the required timescales.** This has the potential to give rise to criticism, but the impact of delay to the programme is a greater risk to the Council.
- 4.1.2 **To delay the programme in order to seek Cabinet authority.** The next available Cabinet Meeting is 21st January 2020. Waiting until then to seek authority would have the effect of delaying the delivery of the replacement bus

depot and significantly jeopardising the delivery of the Games-time village. This would be reputationally damaging to the City, particularly with Games partners. It would also give rise to financial risks, with the City having to meet additional costs arising from its action or inaction.

- 4.2 Hosting the Games has given Birmingham the opportunity to attract and secure additional funding for the area to maximise the regeneration potential of the works. The Council has the following options:

4.2.1 **To continue with the regeneration of Perry Barr as agreed by Cabinet at Full Business Case stage and progressed by this report, thereby delivering the transformational housing growth, highways, and public transport improvements.**

This includes the requirements for the Athletes' Village, the delivery of which is heavily supported by the wider interventions. This will deliver an improved environment within the Perry Barr centre and act as a catalyst to generate further development opportunities and deliver future growth in the area.

4.2.2 **To limit the development work undertaken in Perry Barr by not relocating the bus depot.**

This would mean a review of the Games-time village, and the approach to legacy development. It may be the case that the Council would be unable to meet the requirements of the grants secured, and would have to accommodate some of the cost of the works from internally generated resources, putting additional pressure on the budget.

- 4.3 It is recommended that this report is approved, to enable the timely and planned regeneration of Perry Barr and unlock further development in the area.

5 Consultation

- 5.1 In line with the requirements of the Constitution, in relation to the use of an Emergency Report and the immediate implementation of the decisions, the following approach has been taken:

5.1.1 The Leaders of the Political Groups have been consulted.

5.1.2 The Leader of the Council has been consulted and is supportive.

5.1.3 The City Solicitor and Chief Finance Officer have been consulted and are supportive.

5.1.4 The decisions and recommendations herewith shall be reported to the next scheduled meeting of Cabinet.

- 5.2 There is ongoing dialogue with Ward Councillors for Perry Barr and Aston to keep them up to date on progress of the development of the residential scheme and its potential to regenerate the wider area. All Members have been invited to briefing sessions, and a Members Advisory Board is in place.

- 5.3 Briefings have been provided to MPs across the City and Region as part of briefings on the Commonwealth Games.

- 5.4 Officers from Planning, Highways, Transport and Connectivity, Housing, Procurement, Birmingham Property Services, Legal Services, Commonwealth Games Directorate, and Finance have been involved in the preparation of this report.

- 5.5 Opportunities for the regeneration at Perry Barr are set out in the Birmingham Development Plan and Aston, Newtown and Lozells Area Action Plan, both of which were subject to extensive consultation.
- 5.6 A Residents' Liaison Group has been established to ensure local people are kept informed of progress of schemes in the area. Responses to principles of regeneration have been positive and local people welcome the improvements it will bring to the area.
- 5.7 The freeholders and leaseholders of properties which are directly affected by this element of the scheme have been engaged, and this is continuing.
- 5.8 Significant local stakeholders have been consulted on proposals for the regeneration of Perry Barr including Transport for West Midlands (TfWM) and the West Midlands Combined Authority (WMCA).
- 5.9 The Commonwealth Games Organising Committee is being kept informed on an on-going basis as part of the updates provided at Capital Projects Board and is supportive of the recommendations of this report.

6 Risk Management

- 6.1 The risks of making this emergency decision have been considered. The risk to the programme should the decision not be made in advance of the next Cabinet Meeting are such that the decision has been made to proceed with this approach.
- 6.2 Risks associated with the implementation of the decisions will be managed within the Birmingham 2022 Programme Risks, Issues and Dependencies (RID) Management Protocol. This dynamic approach to RID management is embedded within project delivery and includes clear lines of escalation.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The proposed development at Perry Barr is in line with the Council's plans for growth as set out in the Birmingham 2031 Development Plan. The Village forms the first phase of significant proposals for Perry Barr.
- 7.1.2 This proposal is also consistent with the Council's Vision and Forward Plan 2018 key priorities:
- Birmingham is an aspirational city to grow up in – the regeneration of Perry Barr will lead to a step change in the local Neighbourhood and ensure a safe, warm, sustainable and connected environment in which our children can thrive;
 - Birmingham is a great city to live in – the Council is committed to the development of enough high-quality new homes to meet the needs of a growing city, and the proposals within this report seek to support housing growth in the city;
 - Birmingham is an entrepreneurial city to learn, work and invest in – activity within the construction sector, as unlocked by the recommendations of this report, will create jobs and apprenticeships in the city, and activity in the supply chain industries, supporting the local economy through the Birmingham Business Charter for Social Responsibility;

- Birmingham is a fulfilling city to age well in – the links between health and housing are well recognised. The recommendations of this report unlock the delivery of the Games and its legacy resulting in (i) new homes which are designed to high standards, affordable for residents and will offer a higher quality of life leading to better health outcomes, and (ii) a range of health and wellbeing opportunities being delivered through the emerging legacy programme;
- Birmingham residents gain the maximum benefit from hosting the Commonwealth Games – the improved housing, transport provision and environment in Perry Barr will provide benefits to Birmingham residents.

7.2 Legal Implications

7.2.1 The provisions for Emergency Reports are set out at Paras 6.6 of Part B of the Council's constitution.

7.2.2 Para 6.9i of Part E of the Council's constitution provides for the immediate implementation of decisions.

7.2.3 Section 1 of The Localism Act 2011 contains the City Council's general power of competence.

7.2.4 Section 111 of the Local Government Act 1972 contains the Council's financial powers in relation to the discharge of its functions.

7.2.5 Sections 120-123 of the Local Government Act 1972 contains the Council's land acquisition and disposal powers.

7.3 Financial Implications

7.3.1 The costs associated with the relocation of the depot at the existing site are set out in the table below.

	£
Development agreement cost cap	12,500,000
Longstop cost cap (in addition to the above)	3,000,000
Capped development costs	15,500,000
SDLT on the replacement site	328,177
Buyers design and project management costs	339,844
Buyers surveyor's costs	65,000
Buyers legal fees and disbursements	31,500
Items for payment on completion	764,521
SDLT on acquisition of the existing site	94,500
BCC surveyor's costs	1,000
BCC legal costs	6,000
BCC costs	101,500
GROSS ACQUISITION COSTS	16,366,021

- 7.3.2 The FBC as approved under delegation allocated funding for land acquisitions, with SDLT payments and professional fees consistent with the costs identified above. However there is a significant increase in the cost of constructing the replacement depot (the capped development funding costs of £15.5million as identified in the above table), which was originally identified as £2million. The original allocation was based on limited information and a number of assumptions and exclusions. The increase of £13.5million is a result of full details being provided, and costs being rebased to align with development timescales.
- 7.3.3 The original cost estimate was provided by an external consultant and work will be undertaken in due course to understand why the estimate proved to be so inaccurate.
- 7.3.4 It is understood that the existing National Express depot is opted to tax, as are a number of the components of the replacement site. Where possible options to tax the remaining parts of the replacement site will be considered in order to optimise the Council's VAT recovery position.
- 7.3.5 A revised FBC is being prepared reflecting the details outlined in this report and other changes to the programme. This will be presented to Cabinet for approval in February 2020. All costs will be managed within the overall cash envelope approved through the revised FBC.
- 7.3.6 The contract with WMPH/WMT allows for BCC to scrutinise the development costs through an open book mechanism.
- 7.3.7 The estimated demolition and remediation costs relating to both the existing and replacement sites were considered as a part of the FBC approved in June 2019, and have not varied materially in the intervening period.

7.4 Procurement Implications

- 7.4.1 BCC is not procuring the development of the bus depot, but will be fully briefed through a detailed stakeholder briefing.
- 7.4.2 The procurement of the replacement JobCentre building is subject of a separate report.

7.5 Human Resources Implications

- 7.5.1 The Council is providing support, skill and expertise from within existing resources.

7.6 Public Sector Equality Duty

- 7.6.1 The equalities implications for the development of the Commonwealth Games Village were set out in the report to Cabinet dated 14th November 2017. A specific Equalities Appraisal for the Perry Barr Regeneration Programme was carried out in June 2018 and updated in March 2019, as attached at Appendix 3. The same continues to apply. No material considerations were identified and continue to apply to the report recommendations as they do not have any adverse impact on the protected characteristics and groups under the Equality Act 2010. It is not considered that a further Equalities Appraisal is required.

8 Appendices

- 1 – Plan of existing depot site
- 2 – Plan of depot relocation site

3 – Equalities Appraisal

9 Background Documents

Report to Cabinet 26th June 2018 – Commonwealth Games Village and the Wider Perry Barr Regeneration Programme