

Birmingham City Council



Report to Cabinet Committee- Property

18th December 2024

Title:	Arden Cross Limited (ACL) Development Agreement and Budget 24-25 and 25-26
Lead Member:	Councillor Sharon Thompson, Deputy Leader and Economy and Skills
Relevant Overview and Scrutiny Committee:	Economy, Skills and Culture
Has this report been shared with the relevant Overview and Scrutiny Committee Chair?	YES
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Authorised by:	Philip Nell, Strategic Director Place Prosperity & Sustainability Directorate
Is this a Key Decision?	YES - 012997/2024
Reason(s) why not included on the Forward Plan and confirm who has authorised it to be considered:	N/A
Is this a Late Report?	NO
Reason(s) why Late and confirm who has authorised it to be considered:	N/A
Is this decision eligible for 'call in?'	YES
If 'call-in' has been dis-applied, please provide reason(s) and confirm who has authorised:	N/A
Wards:	Ladywood

Does this report contain exempt or confidential information?

YES

Please delete both the section 'Exempt Information' and 'Confidential Information' if answered 'No' above. If only completing one of the sections below, please delete the other.

Exempt Information

Private Report and associated appendices is exempt from disclosure by virtue of the following Paragraphs of schedule 12A to the Local Government Act, 1972 as amended: (please select the relevant criteria and delete otherwise).

3. Information relating to the financial or business affairs of a particular person (including the authority holding that information).

Has this decision been included on the Notification of Intention to consider Matters in Private? YES

Reasons why not included on the Notification and confirm who has authorised it to be considered: N/A

1 EXECUTIVE SUMMARY

- 1.1 On the 8th November 2022 Cabinet approved, inter alia, the appointment of Muse Places Ltd (Muse) as Arden Cross Limited's development partner for the Arden Cross HS2 Interchange Triangle Site. Arden Cross Limited (ACL) is the Special Purpose Vehicle owned by the Council and other landowners for the development of this site. This report seeks to update Cabinet Committee Property following the previous report and to seek approval to the final terms of the Master Development Agreement for the phased development of land at Arden Cross Solihull, the 2024/25 25/26 budget for ACL and variations to the existing legal documentation.
- 1.2 This report seeks to provide an overview of the position that has been reached concerning the development of the land within the Triangle and set out the background to the rationale for investment by the landowners (including the Council), through Arden Cross Ltd (ACL) in order to protect the landowner's interests.

2 COMMISSIONERS' REVIEW

- 2.1 Commissioners recommend that the approach the Council takes to company governance is reviewed. The relates to ACL and all companies that the Council

holds an interest. The shareholder role needs to be clearly defined as does the role and responsibilities of the Cabinet Sub Committee – Group Company Governance and that of Cabinet sub Committee Property when it comes to companies with a property interest such as ACL. Roles and responsibilities need to be understood by the Council and also translated into expectations around reporting and decision making. For example it is good practice for annual business plans and outturns associated with companies to be considered formally by cabinet or a sub committee. There are good practice guides available that would support such a review.

3 RECOMMENDATIONS

That Cabinet Committee Property:

- 3.1 Authorises the Strategic Director Place, Prosperity and Sustainability and the Deputy Leader to agree on behalf of the Council the final terms of the Master Development Agreement (DA) to be entered into by ACL with Muse Places Ltd and Morgan Sindall Group PLC and inter alia enter into all agreements envisaged and required to put into effect the provisions of the DA on behalf of the Council including inter alia changes to the Shareholders Agreement and the Landowners Option Agreement and associated Draft Ground Lease, negotiation of and entering into the Framework Agreement and Delivery Agreement which together enable ACL to request changes to the HS2 design in order to implement the Arden Cross development the Easement Agreements (which will provide ACL with the necessary rights to link into HS2 infrastructure etc), the draft Phase Development Agreement and draft Phase Sub-Lease.
- 3.2 Notes ACL's revenue operational budget for 2024/25 and 2025/26 and approves Birmingham City Council's (BCC) contribution as per the terms of the ACL Shareholders Agreement (at Exempt Appendix 2) which will be recovered from any end-deal together with the payment of utility UTX track crossings design fees.
- 3.3 Authorises the City Solicitor to prepare, negotiate, execute and complete all relevant legal documentation to give effect to the above recommendations.

4 KEY INFORMATION

Context

- 4.1 The Cabinet report; Arden Cross Interchange Triangle Contractual Agreements to enable development, of the 18th May 2021 approved a suite of agreements which led to ACL appointing Jones Laing Lasalle (JLL) to market the Arden Cross site and complete a development partner selection process to appoint one or more entities in aggregate to undertake development and negotiate the terms of a development agreement to be entered into by ACL, to be brought back to Cabinet.

- 4.2 The Cabinet Report of the 8th November 2022 approved the appointment of Muse Places Ltd as ACL's development partner for the Arden Cross HS2 Interchange Triangle Site as detailed in the Exempt Appendix 3. Due to the effluxion of time, formal notification from DfT that it would progress Surface Level Parking rather than Multi Storey Parking, and consequential reduction of developable area, complexity of the DA and need for Commissioner oversight since the original approval was received it has been decided to seek refreshed approval from Cabinet Committee Property.
- 4.3 Arden Cross is a strategic development site, located on the east side of Birmingham, adjacent to the NEC, Birmingham International Airport and Birmingham International train station. The site in its entirety is located within Solihull Metropolitan Borough Council (SMBC) and is the location of the HS2 Interchange Station now under construction which once complete will provide fast connections to London.
- 4.4 The Cabinet report; Arden Cross Interchange Triangle Contractual Agreements to Enable Development dated 18th May 2021, approved ACL's commencement of procurement of a development partner, to be reported back to Cabinet.
- 4.5 The Arden Cross site is principally owned by three landowners, BCC, Packington Estate and Coleshill Estate, as identified at Appendix 1, who have pooled their land interests to enable the delivery of a comprehensive mixed-use development and have entered into an Option Agreement with ACL which entitles ACL to draw down these land interests for the purposes of development.
- 4.6 ACL is a Special Purpose Vehicle (SPV) that the landowners have created to ensure the development comes to fruition. ACL is financed by the land-owning shareholders through a SPV Shareholders Agreement. ACL provide forecast operational budgets that are supported by a business plan each year.
- 4.7 ACL commissioned the production of an evidence-based masterplan (www.ardencross.com) aligned with HM Government's compliant HS2 scheme. The masterplan and business case have been updated by Muse and articulate that the site can deliver an exciting mix of commercial space, new homes and public realm.
- 4.8 Once fully developed the site has the capacity to accommodate at least 27,000 jobs that will deliver an additional £1.4bn Gross Value Added to the local economy per annum. HS2 will connect Arden Cross to central London in 38 minutes and to every major regional city in less than an hour. The gross development value of the development exceeds £3bn.
- 4.9 The masterplan and business case have the support of local and regional Government and is being mobilised with the necessary departments of central Government who are supportive of the proposals.

- 4.10 The landowning parties entered into a land agreement with the Secretary of State for Transport (SST) in 2016, that amongst other things enables the landowners to utilise the infrastructure being delivered by HS2 to access their development land, provide for easements across the HS2 permanent infrastructure and ensure that land required during the construction of the railway is returned to the relevant landowners for development.
- 4.11 The Arden Cross Interchange Triangle Collaboration Agreement (ACCA) sets out the framework by which the Parties work in collaboration to maximise development and economic opportunities in the site. Which include supporting development and optimising phased delivery whilst recognising and supporting HS2's responsibility for delivery of the new Interchange Station.
- 4.12 The strategic approach to the utilisation and disposal of BCC's property assets was outlined in a report of the Director, Inclusive Growth entitled "Property Strategy 2018/19-2023/24 (the Property Strategy) approved by Cabinet in November 2018.

Proposal and Reasons for Recommendations

- 4.10 The proposed disposal mechanism within the development agreement requires ACL / Muse to obtain best consideration on all land disposals to ensure all disposals represent best consideration and have been validated by third party agency, based upon market conditions at the time and analysis of the bidders' proposals.

Other Options Considered

- 4.11 **Option 1 - Do Nothing.** BCC is under no obligation to proceed with the proposal and would suffer no reputational consequences if it did not proceed. It would not, however, be in line with the aims of the Property Strategy or the external advice obtained to support delivery of the Strategy. The development would not be realised at this time and future receipts would not be available to fund BCC's transformation programme.
- 4.12 **Option 2 – Property Retained for Reuse and / or Development by the Council.** The property is subject to the existing Arden Cross shareholders agreement and procedures.
- 4.13 **Option 3 – Sell the Council's Freehold Interest.** At present the site is subject to a CPO process activated by HS2/DfT, as a result a significant proportion of the land is currently controlled by HS2, partly through "Schedule 16" occupation and partly through having been subjected to a General Vesting Declaration (GVD). This is coupled with a smaller CPO by National Highways of land to the SW corner of the Triangle. Sanderson Weatherall have been appointed by BCC as agent in respect of negotiations regarding compensation claims arising from compulsory

purchase by HS2 and National Highways. These negotiations and discussions over land to be returned in the future remain ongoing and would impact best consideration at this juncture.

- 4.14 **Option 4 – Proceed with Agreed Transaction.** It is recommended to proceed with the transaction outlined in this report, in line with the aims of the Property Strategy and the external advice obtained to support delivery of the Strategy, to deliver a capital receipt(s) to support the Council's financial recovery and to facilitate the development of the sites.

5 RISK MANAGEMENT

- 5.1 The recommended course of action is seeking to mitigate the risk of development not proceeding and mitigate uncertainty around future delivery of the project.
- 5.2 To meet the expectations of the prevailing property market, BCC has committed to deliver as per the agreements at exempt appendix 3.
- 5.3 The proposal crystallises the commencement of the delivery phase and provides for a structured timeline for payments of premium receipts to the Council.

6 CONSULTATION

- 6.1 As the proposals for development of the site are progressed further public consultation will take place including all future planning applications relating to the site.

7 MEMBER ENGAGEMENT

Ward Councillor(s)

- 7.1 The land lies within Solihull Metropolitan Borough Council's (SMBC's) administrative boundary.

Overview and Scrutiny

- 7.2 The report has been notified to the Chair of the Overview and Scrutiny Committee for Economy, Skills and Culture.

Other

- 7.3 Not Applicable. No external consultation has taken place regarding the contents of this report, beyond the informal discussions with ACL.

8 IMPACT AND IMPLICATIONS

Finance and Best Value

- 8.1 Exempt Appendix 2 contains details of ACL's revenue operational budget for 2024/25 and 25/26 to which the Council (together with the other two landowners) make an annual contribution. This is treated as a revenue loan on BCC's balance sheet and will be repaid as part of the shareholder (landowner) returns from future development returns as per the legal agreement with ACL. This could be in the form of capital receipts, rents or dividends negotiated by ACL.

Legal

- 8.2 Sections 120-123 of the Local Government Act 1972 authorises the Council to acquire, appropriate and dispose of land. The disposal power in Section 123 of the Local Government Act 1972 is subject to the best consideration test. The Assistant Director Corporate Landlord (or nominated appointee) has confirmed that the recommended transaction, as detailed in Exempt Appendices 2 and 4, as regards the land of the Council, represents best consideration and satisfies the Council's obligations under Section 123 of the Local Government Act 1972.

- 8.2 Section 1 of the Localism Act 2011 contains BCC's general power of competence, which is circumscribed only to the extent of any applicable pre-commencement restrictions and any specific post-commencement statutory restriction of the power, and Section 111 of the Local Government Act 1972 contains BCC's ancillary financial and expenditure powers in relation to the discharge of its functions, including the disposal and acquisition of property. Section 4(3) of the Localism Act 2011 requires that if the Council does any things for a commercial purpose it has to do them through a company.

- 8.3 The Local Government Act 2003 and guidance issued under it authorises the Council's investment management functions.

- 8.4 Exempt information: Schedule 12A of the Local Government Act 1972 (as amended) Paragraph 3. Information relating to the financial or business affairs of any particular person (including the Council). Exempt Appendices 2 to 9 inclusive are considered to contain commercially sensitive information of a financial or business nature which, if disclosed to the public, could be prejudicial to a named person, individual or company and is in the public interest to keep exempt.

- 8.5 BCC's in-house legal team or subject to resource a Third Party Legal Resource will complete all legal matters associated with the transaction.

Equalities

- 8.6 An Equality Assessment has been carried out and is attached at Appendix 10. This identifies no adverse impacts on any groups protected under the Equality Act 2010.

Procurement

- 8.7 ACL have met with SMBC to discuss Social Value considerations previously and conversations are ongoing. Muse have confirmed in addition to the use of their proprietary tool they also use the Social Value Portal and will work with SMBC; and BCC East Birmingham Team to link with local initiatives to ensure the

development of a programme that meets local needs. Muse have provided confirmation that their approach to delivering Social Value will involve the identification, measurement and optimisation of Social Value outputs/benefits delivered to individuals, business and the communities in which they work.

8.8 The Arden Cross Community and Social Value Strategy identifies the intent for the provision of employment for the local workforce and to ensure jobs are accessible. This strategy was shared with all potential Partners during the bid process and it was confirmed to SMBC that Social Value would be a key consideration during the selection process.

8.4 A draft Social Value plan has been produced for the project, which will be developed further with all stakeholders. One of the drivers of the Social Value Strategy is to be able to quantify social value outputs in a meaningful way and to enable reporting on total social value generated. The outputs are measured in a reporting tool from Social Value Bank which enables projects to quantify the total social value created through the pre and post construction stages including, Community needs analysis, consultation vision, policy analysis, objectives, project charter, KPI's and project

People Services

8.5 No staffing implications

Climate Change, Nature and Net Zero

8.6 N/A as confirmed by the Net Zero Team

Corporate Parenting

8.7 N/A.

Other - Employment Skills

8.8 The development is expected to bring forward jobs and training opportunities during the construction phase. It is anticipated that permanent jobs will be created once the development is completed.

9 APPENDICES

9.1 Appendix 1 – Site Plan

9.2 Exempt Appendix 2 – Recommendation Report

9.3 Exempt Appendix 3 – Key Agreements

9.4 Exempt Appendix 4 – DA HoT's (No Go Scenario)

9.5 Exempt Appendix 5/A/B – Estimated BCC Land Receipts

9.6 Exempt Appendix 6 - Estimated Infrastructure Costs by Phase

- 9.7 Exempt Appendix 7 - ACL Variation to Legal Agreements
- 9.8 Exempt Appendix 8 - Development Zones
- 9.9 Exempt Appendix 9 – Further changes to LOA and draft Headlease
- 9.10 Appendix 10 – Equality Impact Assessment EIA000431: 02/05/2024

10 BACKGROUND PAPERS

- 10.1 Shareholder Report (approved by Cabinet – 2016)
- 10.2 Arden Cross Interchange Triangle Contractual Agreements to Enable Development (Cabinet report 18th May 2021)
- 10.3 Arden Cross Developer Selection (approved by Cabinet 8th November 2022)
- 19.3 Arden Cross Limited Business Plan & Budget Financial Year 2023/24 (Cabinet 25th April 2023)