

Birmingham City Council

Report to the Leader of the Council

28 October 2020



Subject: Land at Bickenhill Lane, Arden Cross adjacent to the proposed HS2 Interchange Station, Solihull: Landowner Option Agreement and revised Shareholders Agreement.

Report of: Assistant Director, Transport & Connectivity

Relevant Cabinet Member: Councillor Ian Ward – Leader of the Council

Relevant O &S Chair(s): Councillor Lou Robson, Economy and Skills, Councillor Albert Bore, Resources.

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Are specific wards affected?	<input type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): NOTE - OUTSIDE CITY BOUNDARY		
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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Exempt Appendix 3 – Proposed Land Option Terms		
Exempt Appendix 4 – Landowners Plan		
Exempt Appendix 5 – Option Agreement Briefing Note		
Exempt Appendix 6 – Shareholder Agreement Briefing Note		
Exempt Appendix 7 – Arden Cross Limited Operational Budget 2020/21		
If relevant, provide exempt information paragraph number or reason if confidential:		
Information relating to the financial or business affairs of any particular person (including the Council)		

1 Executive Summary

- 1.1** This report seeks authority for completion of a Landowner Option Agreement and revised Shareholders Agreement for the City Council owned property (“the Property”) at Bickenhill Lane, Arden Cross, Solihull pursuant to the 2017 and 2018 authorisations set out in 3.3 and 3.4 below.
- 1.2** The Property has a site area of approximately 40.31 hectares and is shown hatched black on the attached plan at Appendix 1.
- 1.3** The revised commercially confidential details relating to the proposed terms of the transaction are set out within Exempt Appendices 3 to 7.

2 Recommendations

- 2.1** Approves the completion of a Landowner Option Agreement and revised Shareholders Agreement for the City Council owned property (“ the Property”) located at Bickenhill Lane, Arden Cross, Solihull extending to approximately 40.31 hectares (as shown edged black on the attached plan at Appendix 1), which is consistent with recommendation 2.2 of the Cabinet report dated 9th October 2018, noting that additional commercially sensitive information is detailed in Exempt Appendices 3 to 7.
- 2.2** Approves the provision of a Shareholder loan of up to £0.311m towards the City Council’s share of Arden Cross Limited estimated costs for 2020/21 in promoting the design, planning application and entry into development agreements which will be repaid either by a developer or revenue income streams.
- 2.3** Notes that following approval of this report, a City Council Arden Cross/HS2 officer and member project board will be created to review ongoing progress and budget requirements.
- 2.4** Delegates to the Leader and Cabinet Member for Finance and Resources of the Council the approval of further loan funding based upon Arden Cross Ltd annual budget requirements as recommended by the City Council Arden Cross/HS2 board in conjunction with the Council’s Capital Board.
- 2.5** Authorises the Acting City Solicitor to prepare, negotiate, execute and complete all relevant legal documentation to give effect to the above.

3 Background

- 3.1** On 20th October 2014, Cabinet approved the Council entering into a Collaboration Agreement for a proposed term of 5 years between Birmingham City Council, Packington Estate, Wingfield /Digby Estate and Solihull Metropolitan Borough Council intending that acting collectively would significantly improve the Council’s support for the delivery of the HS2 Interchange site under the High Speed Rail (London-West Midlands) Parliamentary Bill and the deliverability of a successful adjacent comprehensive development scheme. Cabinet agreed an initial

contributory budget by the Council of £0.300m calculated proportionately on each of the landowners' property holdings at the Arden Cross Site (as shown on the attached plan at Exempt Appendix 4). This budget being established to meet the operating costs of the Consortium's joint investigation and promotion of the Arden Cross Site project.

- 3.2** In December 2016, the Leader and Strategic Director, Major Projects and Programmes approved a further amount of £0.390m which has funded activities up to October 2018.
- 3.3** In July 2017, a Cabinet Member Chief Officer report approved the Council entering into a Joint Venture Company and Shareholders Agreement with other landowners for the purpose of collaboratively promoting the successful development of the Arden Cross Site and endorse the appointment of a Council company director representative. The Council entered into an Arden Cross Limited Shareholders Agreement on 08th November 2018.
- 3.4** On 09th October 2018 Cabinet delegated authority to the Leader and Assistant Director, Property to enter the Council as landowner into an Option Agreement with Arden Cross Limited and with the other landowners.
- 3.5** Cabinet also approved on 09th October 2018 a further contribution up to a maximum sum of £0.500m to Arden Cross Limited. This contribution was in respect of the Council's proportional share of Arden Cross Limited's overhead and operating budget in promoting the design, planning application and entry into development agreements to maximise capital receipts from the Arden Cross Site. These costs are to be recovered from the future capital receipt generated from the disposal of land within the Arden Cross Site.
- 3.6** It was noted that the appointment of the then Corporate Director of Economy as a Director on the Board of Arden Cross Limited (with one equal vote in the joint venture company of a total of three votes) and appointment as Chairman, be reported to the Council's Group Company Governance Cabinet Committee meeting in November 2018.
- 3.7** It is recognised that the Arden Cross project has been ongoing since before 2014, mainly in anticipation of the expected commencement by HS2 of their construction works for mainline railway track and station at Solihull. With commitment by the UK government and HS2 preparation works underway, significant progress has now been made by the Arden Cross Limited's professional team to bring forward an updated masterplan, business case, application for external funding, increased promotional activity and structured lobbying. The attached Landowner agreement will transfer all the owners freeholds into the ownership of Arden Cross Limited at the point when a developer has been successfully identified, who will manage the development and disposal of the site. The revised Shareholders agreement governs the repayment of Shareholder loans and the form of repayment of land receipts to Landowners in the form of capital receipts or as a revenue stream to be

determined in the future. Each Landowner commits to the same terms for the grant of the option.

- 3.8** The creation of a City Council Arden Cross/HS2 project board chaired by a Chief Officer or Member will provide scrutiny and approval of the Arden Cross Ltd budget and loan requirements, monitor expenditure and progress towards delivery of best outcomes for the City Council.

4 Options Considered and Recommended Proposal

- 4.1** Option 1: Do not proceed with the Landowners Option Agreement and revised Shareholders Agreement – will bring an end to working collaboratively with the other land owners which means that the Property may not be developed to its full potential in terms of value achieved, mixed use community and quality of built environment and therefore the opportunity to maximise economic policy growth may be lost.
- 4.2** Option 2: Proceed with the Landowners Option Agreement and revised Shareholders Agreement - the transaction provides the optimum opportunity for the City Council and other Arden Cross Limited shareholders to sell and develop their land holdings as part of the Arden Cross Site project and attract major private investment into the immediate site area and regional economy pursuant to the 2014 Collaboration Agreement as set out in 3.1 above.
- 4.3** Entering into the revised Shareholders Agreement represents an opportunity for improved governance and monitoring of the Council's interest in Arden Cross Limited in respect of its land interest at the Arden Cross Site. A formal Council Project Board will be formed to manage, monitor and oversee future performance and further safeguard the Council's interest.
- 4.4** In future, annual reports will be produced to monitor and address the outcome of anticipated project milestones.

5 Consultation

- 5.1** The Property and the Arden Cross Site are outside the city boundary and consequently ward member consultation has not been undertaken.
- 5.2** The proposal has been considered in consultation with and support of Legal Services and Finance.

6 Risk Management

- 6.1** Inability to meet the current expectations of the property market.
- 6.2** In the event that HS2 infrastructure is not constructed, the Property may be let, sold, developed in isolation or jointly with the other landowners.
- 6.3** In the event that planning consent is not obtained for the development of the Arden Cross Site projected returns and proceeds may be diminished.

- 6.4** In the event that the Arden Cross Site or the Property are permanently compulsorily acquired by HS2 statutory compensation (currently subject to a temporary CPO) will be claimed in accordance with the Land Compensation Act 1973.
- 6.5** In the event that there is deadlock following initial mediation between the shareholders of Arden Cross Limited the revised Shareholders Agreement contains measures permitting the Council to review its future annual contribution of shareholders loans and ultimately to withdraw as detailed in Exempt Appendix 6.
- 6.6** A more thorough assessment of risks will be reported to a new Arden Cross/HS2 Board.

7 Compliance Issues:

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

- 7.1.1** The Property Strategy as approved by Cabinet in November 2018 is aligned with the strategic outcomes outlined in the Council Plan 2018-2022 (as updated in 2019) – to create a city of inclusive growth where every child, citizen and place matters. The Property Strategy will help make Birmingham: a great city to learn, work and invest in; a great city to grow up in; a great city to age well in; a great city to live in; and for residents to gain maximum benefit from hosting the Commonwealth Games. Although the Property and the Arden Cross Site project are outside the city boundary the Arden Cross Site project will contribute to these outcomes as outlined in 7.1.4 below. The Birmingham Development Plan 2020 identifies and supports regional investment for the wider benefit impacting on the citizens of Birmingham.
- 7.1.2** As the largest local authority in the country with the biggest property portfolio, the City Council has the opportunity to utilise its property and land assets in a strategic way to deliver its priorities.
- 7.1.3** The Property Strategy takes a medium to long term strategic approach to how the City Council utilises its unique asset base and will ensure a balanced delivery of maximised commercial and social returns. The City Council's property portfolio will provide a catalyst for development and underpin the social fabric of communities across the city.
- 7.1.4** The current masterplan for the proposed development of Arden Cross Site project details the potential delivery of 6 million sq.ft of mixed use development exceptionally linked to rail, road and airport connectivity. Extensive mixed range housing, commercial, research, academic, hospitality and public realm facilities are planned to create an exemplar new district environment to serve the region.

7.2 Legal Implications

- 7.2.1 The power to hold, appropriate and dispose of land is contained in Sections 120 - 123 of the Local Government Act 1972. The powers to facilitate and recover the costs of administering the loan are contained within Sections 1 and 3 of the Localism Act 2011.
- 7.2.2 Exempt information 12A of the Local Government Act 1972 (as amended) 3. Information relating to the financial or business affairs of any particular person (including the Council). Exempt Appendix 3 to 7 is considered to be in the public interest as it contains 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.

7.3 Financial Implications

Capital

- 7.3.1 The development of the Property at the Arden Cross Site is expected to generate either a capital receipt or a revenue income stream and the Shareholder agreement provides the means for the Council to accept or reject these options which will be approved by the City Council Arden Cross Board in conjunction with the Capital Board. An estimated valuation is included in the Private Appendix 3 based upon current agricultural use with development potential, with added value once enhanced by the commencement of the construction of the HS2 station.
- 7.3.2 The Property forms part of the Leader's Portfolio, and any capital receipt from the sale of this asset will be available to support the City Council's priorities after repayment of development costs, subject to Capital Board approval and the City Council's governance process.

Revenue

- 7.3.3 To date, the Council share of the development costs of the Arden Cross site model to bring it to the market has been £1.190m. This cost is anticipated to be recovered from a capital receipt generated from the eventual disposal of the land.
- 7.3.4 Under the new Shareholders agreement, further funding requests will be made by Arden Cross Limited towards its annual budget requirements, attached at Private Appendix 7 and the Council's share for 2020/21 is £0.311m, which will be provided in the form of a repayable revenue loan when a developer has been identified. Future budget requirements and loan advances will be scrutinised and approved by the City Council Arden Cross/HS2 board in conjunction with the Capital Board. There are no intentions for Arden Cross Limited to develop the site out themselves.
- 7.3.5 On the basis that this project may take a number of years to bring to a partial or complete disposal then the Shareholders agreement provides an option to pay a dividend to shareholders.

7.3.6 Measures are contained within the revised Shareholders Agreement permitting the Council to review its future annual contribution of shareholders loans, mediate disputes and ultimately to withdraw in the event of deadlock as detailed in Exempt Appendix 6.

7.3.7 The Council has opted to tax the Property and there are no VAT implications for the Council. In the event of a disposal then Stamp Duty Land Tax will be payable by Arden Cross Ltd which is expected to be recovered from the developer.

7.4 Procurement Implications

7.4.1 N/A

7.5 Human Resources Implications (if required)

7.5.1 Internal professional property, legal and planning resources will be utilised to complete the option transaction and deliver this sale.

7.6 Public Sector Equality Duty

7.6.1 Having carried out initial screening, Equality Analysis attached at Appendix 2 it is considered that there is no requirement to undertake a full equality analysis as the initial screening disclosed that the report recommendations do not have an adverse impact on the Characteristic and groups as protected under the Equality Act 2010.

8 Appendices

8.1 Appendix 1 – Site Plan

8.2 Appendix 2 - Equality Assessment no. EQUA129

8.3 Exempt Appendix 3 – Proposed Land Option Terms

8.4 Exempt Appendix 4 – Landowners Plan

8.5 Exempt Appendix 5 –Option Agreement Briefing Note

8.6 Exempt Appendix 6- Shareholder Agreement Briefing Note

8.7 Exempt Appendix 7 – Arden Cross Limited Operating Budget 2020/21

9 Background Documents

9.1 Property Strategy 2018/19-2023/24

9.2 Cabinet report: HS2 Interchange Site date 20th October 2014

9.3 Leader of the Council and Strategic Director Major Programmes & Projects report: HS2 Birmingham Interchange – Update date December 2016

9.4 Cabinet report: HS2 Interchange, Arden Cross, Solihull date 09th October 2018