

# Birmingham City Council

## Report to Cabinet

29 June 2021



**Subject:** Grand Central Shopping Centre & Car Park – Litigation – Residual Cost Liability & Revised Capital Budget Request

**Report of:** Acting Director Inclusive Growth, Ian MacLeod

**Relevant Cabinet Member:** The Leader of the Council, Councillor Ian Ward  
Councillor Tristan Chatfield, Cabinet Member for Finance and Resources

**Relevant O &S Chair(s):** Councillor Mohammed Aikhlaq (Resources)

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name of ward: Ladywood		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 008839/2021.		
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
If relevant, provide exempt information paragraph number or reason if confidential: Exempt Appendix Paragraph 3. Information relating to the financial or business affairs of any particular person (including the Council).		

### 1 Executive Summary

- 1.1 The purpose of this report is to seek authority to defend the claim commenced by Grand Central Limited Partnership acting by its General Partner Grand Central Limited (GCL) and associated parties, to include joining Network Rail Infrastructure Limited (NR) into the proceedings and counterclaiming against GCL for associated losses and, where appropriate, on advice of the appointed external legal advisors, to settle the dispute through mediation or other agreed alternative dispute resolution. In summary, to re-purpose the existing approved budget to the task of resolving these disputes.

## **2 Recommendations**

- 2.1 Approve a change of strategy for the use of the existing budget which was provided to meet obligations contained within settlement agreements with both GCL and National Car Parks (NCP). These settlement agreements were unilaterally terminated by both GCL and NCP in 2020.
- 2.2 To take all steps necessary and as advised by appointed external advisors to defend the legal claim brought by GCL, to counterclaim against GCL and to seek indemnities from relevant third parties.
- 2.3 Where advised by appointed external advisors, take appropriate steps to attempt to settle the claim and any claims against third parties, through alternative dispute resolution procedures such as mediation;
- 2.4 Authorise the City Solicitor (or delegate) to negotiate, execute and complete all necessary legal documentation to give effect to the above recommendations.

## **3 Background**

- 3.1 This matter concerns the redevelopment of the Pallasades Shopping Centre and Car Park, now known as Grand Central Shopping Centre, in Central Birmingham. In 2011, BCC entered into an agreement for lease with NCP to construct a new car park and to grant NCP a new lease of the car park. The works were to be procured by NR under a development agreement dated 22 January 2009.
- 3.2 Practical Completion of the works occurred in June 2015 following which, it was alleged that the car park contained defects. As a consequence of these alleged defects, NCP refused to enter into the lease.
- 3.3 In 2016, BCC sold its leasehold interest in Grand Central to GCL. In this sale and purchase agreement, BCC contracted to remedy the alleged defects in the car park. As NR had procured and carried out the works, BCC entered into a subsequent agreement with NR to rectify the identified alleged defects (known as the Variation to the Master Agreement).
- 3.4 Various remedial works were carried out by NR and its appointed contractors in 2016 on the Car Park. It is alleged that these works failed to rectify the outstanding alleged defects. As a result, GCL and NCP alleged that BCC failed to undertake the appropriate remedial works and sought compensation as a result of this.
- 3.5 In 2018, GCL, NCP and BCC entered into settlement agreements by which a remedial solution would be implemented and various financial payments would be made. However, it was alleged that BCC failed to procure that the remedial solution be implemented in a timely way and GCL and NCP terminated the settlement agreements at the end of April 2020.
- 3.6 GCL has issued legal proceedings for the costs of implementing the remedial solution and an indemnity for further rents plus other damages; the total value of the claim is circa £20 million.

### **Current Position**

- 3.7 BCC was required to file and serve a defence in the legal proceedings by 26 March 2021. BCC's external legal team obtained extensions and a Defence and Counterclaim was filed at Court and served on GCL on 1 June 2021. A claim was also issued against NR on the same date to seek an indemnity from them for any liabilities that were found to be owed by BCC to GCL.

- 3.8 Further steps will need to be taken in the litigation over the coming months and in December, the Court will give directions to prepare the matter for trial. It is anticipated proceedings will be complex and costly. BCC has been advised it could incur substantial fees and charges, if the matter proceeds all the way to trial. Every opportunity will be taken to encourage all parties to resolve the issues through mediation where BCC is advised it is appropriate to do so and BCC will be looking to pass on any potential liabilities to NR.
- 3.9 It is understood that NCP may also be considering submitting a claim for compensation although discussions are at a preliminary stage. In addition to the above GCL has alleged further defects and associated claims in respect of Grand Central but these claims are not part of the current claim. It is possible that these matters may also be litigated at some point in the future.

#### **4 Options Considered and Recommended Proposal**

- 4.1 **Option 1 – Settle the Claims in Full:** This would mean doing nothing to defend the claim being made and make whatever payments that are being claimed by GCL.
- 4.2 **Option 2 – Defend the claim being made:** By investing in lawyers and other experts to assist in defending the claim, this will determine what sums if any are due to GCL and should leave BCC in a substantially better position, notwithstanding the cost of employing lawyers and experts.
- 4.3 Recommendation – Choose **Option 2**.

#### **5 Consultation**

- 5.1 There has been no formal consultation with ward members on the contents of this report due to the nature of the dispute.

#### **6 Risk Management**

- 6.1 The key risk is;
- 6.1.1 The uncertainty of litigation. The Council's appointed legal team and experts will advise on risk on a regular basis.
- 6.1.2 In addition, every attempt will be made to settle matters with GCL through mediation when it is appropriate to do so.

#### **7 Compliance Issues:**

- 7.1 **How are the recommended decisions consistent with the City Council's priorities, plans and strategies?**
- 7.1.1 BCC has adopted the Council Plan 2018-2022. This identifies 5 outcomes for the city, the first of which is *Birmingham is an entrepreneurial city to learn, work and invest in* (Outcome 1). By seeking to mediate a resolution based on the advice of external legal advisors and experts, and in default, seeking the assistance of the Court, will put BCC's finances in a position of greater certainty enabling BCC to make investment decisions to support Outcome 1, secure in the knowledge that this liability will not re-appear to drain further financial resources.

## **7.2 Legal Implications**

- 7.2.1 BCC's powers to enter into this report are contained in Section 1 Localism Act 2011 which contains BCC's competency power and Section 111 Local Government Act 1972 which authorises BCC's ancillary monetary powers in relation to and incidental to the discharge of its functions.
- 7.2.2 The financial consequences of the proposed arrangements are summarised in the attached Exempt Appendix 2. This is covered under Exempt Information – discretion to exclude public: information falling within the categories outlined in 12A of the Local Government Act 1972 (as amended): Item 3 (Information relating to the financial or business affairs of any particular person (including the Council)). In the circumstances Exempt Appendix 2 is considered to be legally privileged advice which is commercially sensitive information and would be prejudicial if disclosed in the public domain.
- 7.2.3 External legal advice is being sought from Anthony Collins Solicitors and Legal Services are kept informed of events as they happen.
- 7.2.4 BCC is also using other construction experts to assist with defending the claims.

## **7.3 Financial Implications**

- 7.3.1 Whilst it is not possible to predict the outcome of any mediation and the ongoing litigation, steps are being taken to strenuously defend all claims and to minimise any liabilities on BCC to ensure that any financial implications fall within approved budgets.

## **7.4 Procurement Implications**

- 7.4.1 There are no procurement implications because all the consultants who are required to assist BCC in this matter have already been procured. However, Anthony Collins Solicitors may require more financial resources to assist BCC with defending the claims dependent on the ongoing Court claim and whether further subsequent claims are forthcoming. At this stage, it is not possible to quantify this potential impact.

## **7.5 Human Resources Implications (if required)**

- 7.5.1 Property Services have identified a Project Manager (Neil Hingorani) to deliver this proposal on behalf of BCC.

## **7.6 Public Sector Equality Duty**

- 7.6.1 The initial equality assessment screening is appended as Appendix 1 (ref EQUA104 dated 06/09/2018). This is a financial transaction relating to a previous project, this is not a new function or service requirement, by implication there is no need for a further new full assessment.

## **8 List of appendices accompanying this report:**

- 8.1 Appendix 1 – Initial Equality Assessment (EQUA104).
- 8.2 Appendix 2 – Exempt Information

## **9 Background Documents**

- 9.1 Report to Cabinet– “Grand Central Shopping Centre and Associated Car Park, 18th September 2018.