

LONDON BOROUGH OF CROYDON

REPORT:	Cabinet	
DATE OF DECISION	26th July 2023	
REPORT TITLE:	Brick by Brick Croydon Ltd Update Report and land acquisition by HRA - July 2023	
CORPORATE DIRECTOR	Jane West – Corporate Director of Resources Susmita Sen – Corporate Director of Housing	
LEAD OFFICER:	Huw Rhys Lewis – Director of Commercial and Property	
LEAD MEMBER:	Mayor Jason Perry – Executive Mayor Cllr Jason Cummings – Lead Member for Finance	
KEY DECISION?	YES	Key Decision 5623EM – Decision incurs expenditure, or makes savings, of more than £1,000,000 or such smaller sum which the decision-taker considers is significant having regard to the Council’s budget for the service or function to which the decision relates
CONTAINS EXEMPT INFORMATION?		Yes – Confidential Appendix A and B Exempt under paragraph 3 of Schedule 12A of the Local Government Act 1972 and the public interest in withholding disclosure outweighs the public interest in disclosure.
WARDS AFFECTED:	All	

1 Summary of Report

- 1.1 The report provides Cabinet with an update with regards to Brick-by-Brick Croydon Ltd (BBB/ the Company), a wholly owned housing development company. This report builds on the progress made since the last update provided to Cabinet, in November 2022. The Company has reached Practical Completion on all their development sites and has disposed of most sites with the exception of Lion Green Road (Red Clover Gardens), 7 residential units at Drummond and Warminster and a handful of commercial and land sites.
- 1.2 Progress has been made by BBB to dispose of the 157 units at Lion Green Road (Red Clover Gardens).
- 1.3 As at the end of March 2023 BBB have also now repaid a further £47.30m in loans and interest in addition to the £30m that was paid at the end of March 2022. The Council received £8.56m in interest income and the balance of £38.71m was used to settle the loan balance. It is expected that a further £50m will be paid to the Council in 2023/24.

- 1.4 Once Lion Green Road and the Belgrave and Grosvenor sites have been disposed of, material activity at BBB will end and the Council will work with the Company to finalise remaining assets and liabilities. A further report on winddown process and approach will be brought back to Cabinet including a position in relation to potential debt write off. Key winddown considerations and implications remain the same as indicated in the November 2022 Part B Confidential report.
- 1.5 The Council's HRA has identified that acquiring the Belgrave and Grosvenor will provide needed land to help with potential future re-development of the Belgrave and Grosvenor estate.

2 Recommendations

For the reasons set out in the report and its appendices, the Executive Mayor in Cabinet, is recommended:

- 2.1 To note the progress on asset disposals and the financial position of Brick by Brick Croydon Ltd (BBB) since the last update report presented to Cabinet on 30th November 2022.
- 2.2 To approve that the Council under its Housing Revenue Account (HRA) purchase the freehold of the previous Printworks site on Portland Place in South Norwood for a consideration of £0.854m from BBB with the aim of the site being allocated for future housing regeneration opportunities in South Norwood.
- 2.3 To approve that the Council can vary the Belgrave and Grosvenor Option Agreement, subject to agreement with BBB, to include the ability to acquire the Belgrave & Grosvenor site for £1.217m all-inclusive of costs incurred by BBB.
- 2.4 To approve that once the variation to the Belgrave and Grosvenor Option Agreement has been agreed with BBB, the Council via its HRA can acquire the site from BBB with the aim of the site being allocated for future housing regeneration opportunities in South Norwood.
- 2.5 To delegate to the Corporate Director Resources and S151 Officer, in consultation with the Executive Mayor, Lead Member for Finance and Director of Commercial and Property to acquire any asset (including land and property) from BBB subject to appropriate due diligence.

3 Reasons for recommendations

- 3.1 The Council is committed to updating Cabinet on progress being made with regards to its wholly owned development company, Brick by Brick Croydon Ltd. This report will be a penultimate report, subject to final disposal of Red Clover Gardens, with one final report expected to Cabinet before December 2023 stating clear winddown terms for the company.

- 3.2** Under the Council's constitution all decisions to acquire sites with a value higher than £0.500m need to be made by Cabinet. The Council also sees the potential benefit of holding the assets identified within the recommendations for future regeneration purposes.

4 Background and details

- 4.1** The Council last updated Cabinet on 30th November 2022 on plans and progress being made to dispose of all land and property assets owned by BBB. BBB continues towards winding down the company and key work is ongoing to sell off remaining assets and pay off liabilities.
- 4.2** BBB remains insolvent however the Council issued a new Letter of Comfort in January 2023 to the Company and its Directors to assure them and their auditors that the company can remain a going concern. The Council continues to deliver on its plan to place BBB into a solvent position and for BBB to then winddown the company to dormant position. This will happen once all assets and liabilities have been settled. Subject to disposal of the Lion Green Road/ Red Clover Gardens development, a further report will be brought to Cabinet by December 2023 detailing the final debt write off balance and closure of BBB activities.

5 Asset disposal update

- 5.1** Since the update provided in November 2022 significant progress has been made by BBB to dispose of various development sites. BBB is in the process of disposing of the largest remaining site at Red Clover Gardens and has a handful of residential and commercial units at 3 sites. At the time of writing this report, there were 164 residential units, 3 land sites and 3 commercial units in the process of being disposed of with offers made across 159 residential units and 1 offer on a commercial unit.
- 5.2** Since the November 2022 report BBB have now disposed of the following sites and developments and generated a total of £38.2m in capital receipts
- Kindred House
 - Trellis Mews
 - Heathfield Road development Block B
 - Land at Malton House and Regina Road
- 5.3** BBB are at an advanced stage in their disposal of the Red Clover Gardens to a private investor.
- 5.4** The residential market has been challenging in light of the macroeconomic environment however the company continues to make progress with its disposal plan. Despite the rise in the Bank of England interest rate to 5.0% at the time of writing this report, which has increased the cost of financing acquisitions, interest in BBB properties remains on stable grounds.

- 5.5** BBB also continues to hold 3 land sites which have been earmarked for disposal. These land sites include Academy Gardens, Eagle Hill and Coombe Road. The total value of these sites is £1.050m and BBB continues to find potential buyers for these sites working actively with estate agents. These land parcels are infill sites that sit in between other large developments and therefore there is a niche of potential interested parties making it difficult to identify a buyer.
- 5.6** BBB will also be handing back their leased office accommodation on George Street to the Landlord in the first week of August 2023 and remaining BBB staff will be given temporary office accommodation within Bernard Wetherell House (BWH). The provision of office space at BWH will be on flexible commercial terms, but at a commercial rental rate and more importantly the move ensures BBB begins to exit from its lease liability with the Landlord.
- 5.7** The Council is seeking flexibility to acquire BBB assets to support potential Council needs. Whilst this decision will be made on a case-by-case basis the flexibility to acquire remaining assets will be tested against Council business needs.

6 Financial Update

- 6.1** BBB remains insolvent however is currently supported by the Letter of Comfort issued by the Council. The company however has repaid loans to the Council a total of £47.3m in 2022/23. This is in addition to the £30.4m that was repaid in 2021/22. The outstanding loan balance as at the end of March 2023 was £103.93m and all accrued interest has now been paid back to the Council.
- 6.2** Projections based on the latest management accounts submitted by BBB indicate that a further £45m will be repaid back to the Council in principle loans and a further £4.6m in interest income. This projection is based on all activity within BBB coming to a close by end of December 2023. Should this date be delayed then further operational costs will be incurred by BBB and therefore reduce the final amount of Loans paid back.
- 6.3** In addition, as at 31st March 2023 BBB has paid a total of £5.27m related to initial land payments as required under various option agreements. BBB is yet to pay a further £1.9m of land value payments related to Belgrave and Grosvenor and Red Clover Gardens development. These final payments will be settled in 2023/24 as soon as both remaining developments have been disposed.
- 6.4** As part of the final assets and liabilities assessment the Council will further review potential for any additional overage due to the Council as required to be tested under the Option Agreements. Option agreements stipulated that the Council should receive an additional share of any profits generated by each development that is above a pre-agreed value between the Council and BBB.
- 6.5** The Council must ensure that it receives best consideration for disposing its assets. When the Council initially entered into the Option agreements a land value was indicated that BBB would need to pay at either disposal of the land or at Practical Completion of the development.

- 6.6** By the end of 31st March 2023 Brick by Brick had not submitted their 2021/22 Final Accounts to Companies House due to delays in receiving confirmation from HMRC in relation to an outstanding VAT matter. The November 2022 report flagged a VAT assessment being conducted by HMRC which flagged concerns in relation to treatment of VAT as part of the Fairfield Halls works. Due to the extensive work required to substantiate HMRC requests the auditors for BBB refrained from signing off the BBB accounts until conclusion of the HMRC review.
- 6.7** During the financial year 2022/23, HMRC carried out a regular VAT and various concerns were flagged with treatment of VAT on Fairfield Halls. HMRC raised concerns that the VAT was not accounted correctly, and timely reporting was not done to HMRC. This could have resulted a maximum fine of over £2m. However, with joint working between the Council and BBB the HMRC review on the VAT matter at Fairfield Halls has now been resolved with a positive outcome and a zero fine has been confirmed. The audited Accounts were filed at Companies House on 4th July 2023.
- 6.8** The year end accounts to indicate a loss of £20.02m for the year ending March 2022, a £5.24m reduction from March 2021. The Company generated a net £13.82m in cash compared to a cash generation of £4.69m by the end of March 2021.
- 6.9** The Council has not lent any new funds to Brick by Brick and the company remains cashflow solvent and is successfully covering all its day-to-day operational needs. BBB continues to exit their liabilities where possible to minimise ongoing costs and retain more of the cash balance.

7 Belgrave and Grosvenor & Portland Place Site

- 7.1** The Council has identified that the site at Belgrave Road and Grosvenor Road, identified within Appendix 1 of the Belgrave and Grosvenor Option Agreement (Option agreement provided in Confidential Appendix A of this report), as future development opportunity for provision of social housing.
- 7.2** The acquisition also includes an additional site, known as Portland Place, which Brick by Brick Croydon Ltd (BBB) purchased in 2018. The site consists of a commercial building that was previously used as a printing business and was acquired to support a larger development opportunity.
- 7.3** The total value of both sites is £2.075m, with the Belgrave and Grosvenor site valued at £1.217m and the Portland Place site valued at £0.854m. The calculation to the value of these sites has been provided within Confidential Appendix B of this report and the valuation has been conducted by a RICS qualified internal valuer.
- 7.4** The sites will be acquired by the Council's Housing Revenue Account (HRA) and the sites will support future housing regeneration projects and ensure there is land

available to deliver additional homes within the Borough. This is in line with the Mayor's business plan to invest in council homes to drive up standards.

- 7.5** The July 2021 Cabinet update report explained that there were six sites where work had not commenced on site. These sites are: Academy Gardens, Belgrave and Grosvenor, Coombe Road, Eagle Hill, Malton House and Regina Road. It was therefore agreed that the six sites should not progress to development.
- 7.6** Of the six sites indicated in paragraph 7.5, Belgrave and Grosvenor, is the largest and is likely to generate a significant value. The Council had originally only transferred the three parcels of land, as detailed within Appendix 1 of the Option agreement, provided within Appendix A. Subsequently, BBB bought the Portland Place site in 2018.
- 7.7** All 6 sites are bound by Option agreements that the Council and BBB previously entered into. Those agreements include an option for the Council to buy back undeveloped sites after a longstop date and within a certain amount of time, with each option having a different exercise date. However, the mechanism for buy back within the Option Agreement does not allow for the Council and BBB to agree a price to transact with the site as a result a variation is required to give both parties that option.
- 7.8** Giving the Council and BBB the ability to acquire the site at right valuation allows for a better and more transparent accounting entries where each transaction is accounted for gross.
- 7.9** The Council considered its position on all sites and identified that in order to deliver a more meaningful development it would need to acquire all parcels of land adjoining the Belgrave and Grosvenor Estate. The Council is already the freeholder of the Estate and therefore the additional site provides significant land to deliver a future scheme. Whilst the Council has no plans to develop the Belgrave and Grosvenor Estate at this stage, acquiring these land sites now gives the Council (within the HRA) necessary freehold to efficiently deliver a comprehensive scheme.
- 7.10** The Portland Place site did not have an Option Agreement as the site was acquired from the market by BBB and therefore was not a site previously owned by the Council. In this regard the Council's HRA is simply buying the Portland Place site as it would any other site in the open market.

Future Viability

- 7.11** The Council is keen to progress the Regina Road redevelopment which will act as a potential driver for future developments to support the Council's aim of providing better homes to its residents. There are four others similar LPS tower blocks in the Belgrave and Grosvenor estate and the emerging strategy, working with the Local Planning Authority, is to consider these seven South Norwood LPS blocks within one local Masterplan. The acquisition of land sites adjacent to existing Council land at Belgrave and Grosvenor Houses provides the Council with a great opportunity to develop a

holistic scheme which could deliver, not only more and better homes, but also provide the necessary amenities for modern living.

8 ALTERNATIVE OPTIONS CONSIDERED

- 8.1** In relation to the acquisition of Belgrave and Grosvenor the alternative option was to let BBB dispose of the sites in the open market. The outcome for BBB would be the same as the proceeds from the disposal in the open market would have generated the same cash receipt, however such an outcome would have limited options for the Council's HRA, as it will limit its development opportunities outlined above.

9 IMPLICATIONS

9.1 FINANCIAL IMPLICATIONS

Purchase of Belgrave & Grosvenor and Portland Place site

- 9.1.1** The purchase of the two sites for a total of £2.075m will be funded within the HRA using borrowing or internal resources. The HRA will review at year end the best course of funding the acquisition however should borrowing be used then further borrowing costs will be incurred by the HRA. Borrowing rate for a 20 year PWLB loan is c5.60% resulting in ongoing interest charges of £0.116m per annum. The capital receipts generated by BBB from the disposal of the Belgrave and Grosvenor and the Portland Place sites will be used to pay down the Council's loan.
- 9.1.2** There is sufficient headroom within the current HRA Business Plan to allow for the purchase of these sites and the potential interest charges should borrowing be required to meet the costs. As the report indicates that the parcels of land at Belgrave and Grosvenor Road and at Portland Place are being purchased for a future development opportunity, this does mean that if borrowing is used the HRA will incur the interest costs until the development is progressed and generates additional rental income to support the interest costs.

Brick by Brick Update

- 9.1.3** Under the preferred option of a solvent run off, the Council as a lender and as the largest creditor to BBB, will need to write off a material amount of the loan to bring BBB into a solvent position. The cashflow and the balance sheet clearly indicate that BBB will not be able to cover all its liabilities.
- 9.1.4** The write off of the loan balance will not add any further pressures to the Council as the Council has covered the risks of the loans via the MRP provision. However, recovering more of the remaining loan will result in a benefit to the Council's revenue position as the repayments can be used to

pay down the loan (via the Capital Financing Requirement) which reduces the MRP the Council has to set aside.

- 9.1.5** As part of the final calculations of the remaining assets and liabilities at BBB the Council will also review accounting implication to the HRA and ensure each account will be appropriately compensated in line with Local Authority Accounting regulations and practices.

9.2 LEGAL IMPLICATIONS

- 9.2.1** The recommendations in this report updating Cabinet on the position of Brick By Brick Croydon Ltd are to note only. Legal advice will be required in respect of any future proposals to write off debt and wind up the company, including in relation to subsidy control.

- 9.2.2** In relation to the recommendations regarding the purchase of sites for future housing redevelopment, the Council has various powers to acquire the properties which are the subject of the recommendations:

- Under Section 8 'Periodical review of housing needs' of the Housing Act 1985 and Part 7 'Homelessness' of the Housing Act 1996, the Council is required to consider housing conditions and needs within the Borough including addressing homelessness. This duty can be discharged through future development opportunities. Section 9 'Provision of Housing Accommodation' of the Housing Act 1985, under which the Council has the power to provide housing accommodation by acquiring houses (including flats). These powers may equally be exercised in relation to land acquired for the purpose (a) of disposing of houses provided, or to be provided, on the land, or (b) of disposing of the land to a person who intends to provide housing accommodation on it.
- Section 17 'Acquisition of land for housing purposes' of the Housing Act 1985, under which the Council has the power to acquire houses, or buildings which may be made suitable as houses, together with any land occupied with the houses or buildings. This includes power to acquire land for the purpose of disposing of houses provided, or to be provided, on the land or of disposing of the land to a person who intends to provide housing accommodation. Section 120 'Acquisition of land by agreement by principal councils' of the Local Government Act 1972, under which the Council has the power to acquire land to enable the fulfilment of its functions (in this case housing functions).
- Section 12 'power to invest' of the Local Government Act 2003 and the Council's powers to invest for any purpose relevant to its statutory functions or for the purposes of prudent management of its financial affairs.

- 9.2.3** In relation to potential borrowing, as described in the section 9.1 of the report (above), Section 1 ‘power to borrow’ of Local Government Act 2003 gives the Council the power to borrow (a) for any purpose relevant to its statutory functions under any enactment; or (b) for the purposes of the prudent management of its financial affairs. This power is subject to Section 3 ‘duty to determine affordable borrowing limit’ of the Local Government Act 2003, requiring a local authority to determine and keep under review how much money it can afford to borrow.
- 9.2.4** In relation to the recommendations regarding amendments to the existing Option Agreement the Council has the power to vary pursuant to Section 1 of the Localism Act 2011, which states that a local authority “has power to do anything that individuals generally may do”. This enables a local authority to act as though an individual with full capacity, unless otherwise expressly prevented or restricted by some other statutory provision. The Option Agreement relating to the Belgrave & Grosvenor site, dated 26th February 2021, currently includes an option for the Council to buy back the site under Schedule 5 of that agreement. However, this is only exercisable after a longstop date, which has not yet expired, and the price to be paid by the Council would be a combination of costs already incurred by Brick By Brick less buy back costs. As such, variations to the Option Agreement are required to enable the Council to buy back the site earlier and to buy at an agreed price.
- 9.2.5** When making decisions in respect of purchasing Brick By Brick sites via an existing Option Agreement mechanism (including variations thereto), the Council will need to consider its responsibilities as Land Owner/ Purchaser, Shareholder and Lender. It is important to separate what is in the interests of Brick by Brick from what is in the interests of the Council (including in its capacity under the HRA). Fundamentally, decisions need to be made solely having regard to what is in the interests of the Council (allowing for the fact that the interests of the company are intertwined with those of the Council).
- 9.2.6** The proposed variations to agreements and acquisitions of land set out in this report will also require independent decisions of Brick By Brick, which may require Director and/or Shareholder decisions. The company will follow its own decision-making processes in that regard and, if required, the Council’s power to make decisions as sole Shareholder may be exercised pursuant to the general power under Section 1 of the Localism Act 2011 (set out above).
- 9.2.7** In making decisions under this report, the Council will need to be mindful of its financial position, its fiduciary duties and the requirement to have regard to all relevant factors and to disregard irrelevant ones. The Council must act in accordance with the principles of Wednesbury reasonableness, meaning decisions that a rational person might make, having regard to all relevant considerations.

- 9.2.8** The Council is under a general Duty of Best Value to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness (Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007)).
- 9.2.9** The Subsidy Control Act 2022 (the Act) provides a new framework for the provision of subsidies within the UK, building on the provisions in the subsidy control chapters of the Trade and Co-operation Agreement (TCA), which have applied in the interim of the UK's exit from the EU. The Act took effect in January 2023 but the TCA is still relevant and the Act.
- 9.2.10** Under the Act, a subsidy is defined as:
- 2(1) In this Act, "subsidy" means financial assistance which—
- (a) is given, directly or indirectly, from public resources by a public authority,
 - (b) confers an economic advantage on one or more enterprises,
 - (c) is specific, that is, is such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or the provision of services, and
 - (d) has, or is capable of having, an effect on—
 - (i) competition or investment within the United Kingdom,
 - (ii) trade between the United Kingdom and a country or territory outside the United Kingdom, or
 - (iii) investment as between the United Kingdom and a country or territory outside the United Kingdom.
- 9.2.11** Section 3 of the Act (Financial assistance which confers an economic advantage) explains how to determine whether financial assistance confers an economic advantage on an enterprise for the purposes of section 2(1)(b) above, and states:
- 9.2.12** (2) Financial assistance is not to be treated as conferring an economic advantage on an enterprise unless the benefit to the enterprise is provided on terms that are more favourable to the enterprise than the terms that might reasonably have been expected to have been available on the market to the enterprise.
- 9.2.13** On the basis of the internal Valuation Calculations Report at confidential Appendix B, the acquisition price reflects terms that might reasonably have been expected to have been available on the open market, recognising the uncertain economic climate.
- 9.2.14** Under the TCA, a subsidy is financial assistance which confers an economic advantage on one or more economic actors (in this case BBB), and "is specific, insofar as it benefits, as a matter of law or fact, certain economic actors over

others in relation to the production of certain goods or services, and has, or could have, an effect on trade or investment between the parties (meaning the UK and the EU). However, the Market Economy Operator Principle (MEOP) (now sometimes referred to as the Commercial Operator Principle) is the principle that where a public authority does something on the same terms as a comparable economic actor would, then no subsidy arises because there is no specific 'economic advantage' to any other economic actor as a result.

9.2.15 In relation to subsidy control therefore, the acquisition does not represent a subsidy to BBB where the price reflects a fair market value. Confidential Appendix B sets out the Council's internal valuer's assessment and supports a reasonable view that the price can be judged to be on-market, having regard to the factors referred to in that Appendix and any wider consideration of market uncertainties.

Insert at the end of the legal section: Comments approved by the Kiri Bailey Head of Commercial and Property Law on behalf of the Director of Legal Services and Monitoring Officer (Date 06/07/2003)

9.3 EQUALITIES IMPLICATIONS

9.3.1 Under the Public Sector Equality Duty (PSED) of Equality Act 2010, decision makers must evidence consideration of any potential impacts of proposals on groups who share the protected characteristics, before decisions are taken. This includes any decisions relating to how authorities act as employers; how they develop, evaluate and review policies; how they design, deliver and evaluate services, and how they commission and procure services from others.

9.3.2 Section 149 of the Act requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected. Characteristic
- Foster good relations between people who share a protected characteristic and people who do not share it.

9.3.3 An equality analysis has been carried out in respect of resident consultation at Regina Road. The data collected via the consultation at Regina Road indicates that the proposal will have a positive impact on age, disability, sex, race and religion and belief. This is a live document and will be updated with further data when available.

Approved by Denise McCausland Equalities Programme Manager, on 07/06/2023.

9.4 HR Implications

9.4.1 There are no HR implications arising from this report. Should any implications arise these will be managed under council policies and procedures.

Approved by: Gillian Bevan, Head of HR Resources and Assistant Chief Executives on behalf of the Chief People Officer. (Date 07/06/2023)

10 Background documents

- 10.1** Brick by Brick Croydon Ltd Update Report – **30th November 2022**
- 10.2** Delegated Decision - Acquisition of Land sites, Regina Road and Malton House, from Brick by Brick Croydon Ltd - **15th March 2023**
- 10.3** Delegated Decision - Increasing Housing Supply - purchase of Brick-by-Brick Trellis Mews (Avenue Road) – **23rd March 2023**
- 10.4** Delegated Decision, acting as lender, to approve that Brick by Brick may dispose of Block B, Heathfield Gardens development with a further price reduction as detailed in Part B of the report. – **March 2023**
- 10.5** Delegated decision, acting as lender, on Warminster and Drummond Road development – **May 2023**

11 Appendices

Confidential Appendix A – Belgrave and Grosvenor Option Agreement

Confidential Appendix B – Valuation Calculations Belgrave and Grosvenor and Portland Place.