

Officer delegated decision: 15 January 2017

Report title: Pop Brixton - lease extension until November 2020

Wards: Coldharbour

Report Authorised by: Sue Foster Strategic Director for Neighbourhoods and Growth

Portfolio: Councillor Matthew Bennett, Cabinet Member for Planning, Regeneration and Jobs

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Report summary

Pop Brixton is a temporary project on the Lambeth Council-owned Pope's Road site, delivered to make positive use of the space while the redevelopment of the Brixton Central area is planned. The Council owns the land and has entered into a peppercorn lease until 13 October 2018 with Pop Brixton Ltd. This lease is linked to a Service Level Agreement (SLA), with the council benefiting from 50% of any profit coming from the project. As the start of projected development programme for the Brixton Central masterplan has now extended to early 2021, this report seeks authority to extend the lease with Pop Brixton until November 2020. This should help ensure the Council receives a financial return from the scheme and that the project continues to deliver outcomes linked to enterprise and employment support. If the lease is extended, the proposal is to include a base rent, as part of the profit share mechanism, to allow the council to benefit from its share of the profit sooner by drawing down a regular base rent, which will be topped up to the level of a 50% profit at agreed milestones.

Finance summary

There are a number of options open to the Council in extending the Pop Brixton lease. These include a surrender and regrant, or granting of a reversionary lease. This will be subject to further legal advice as to the most appropriate mechanism. As such, for the purposes of the remainder of this report, it will be referred to as an 'extension' but may be one of the above instead.

The lease extension until a maximum November 2020 will impact on the estimated loss of rental income for the site of £78,000 (£39,000 per annum).

The extension of the lease to November 2020 will also allow Pop Brixton to generate more income, which will benefit the Council by feeding into its agreed 50% share of Pop's profits. The extension will also mean that Pop Brixton will start paying the Council an element of the profit share from October 2018 as a base rent.

Recommendations

- (1) To extend the current lease from 13 October 2018 to 30 November 2020 based on an agreed base rent for the period October 2018 to November 2020, followed by a final payment based on 50% profit, minus any base rent paid.
- (2) To delegate agreement of the final base rent figure to the Head of Valuation Services and Strategic Property.
- (3) To agree the amendments to the Service Level Agreement set out in this report.

1. Context

- 1.1 Pop Brixton opened in late May 2015 and is now 2 years old. The Council has entered into a peppercorn lease with Pop Brixton Ltd, a company set up to deliver the project, until 13 October 2018. The relationship between the Council and Pop Brixton is articulated via a Service Level Agreement (SLA). Based on the principles set out in the SLA, the site is producing a number of social outcomes and furthermore, when the site become profitable, Lambeth Council will benefit from 50% of the profits.
- 1.2 The project was developed to provide positive activity on the site while its long-term future is established. It was initially expected that the Council would not need the site for its long-term development until at least October 2017, while it undertook a programme of work including the Brixton Central masterplan, development partner procurement and detailed design and planning. Over the past year, this programme has been pushed out at least a further two years, to the start of 2021, as more detailed consideration about the nature of the delivery arrangements and procurement exercise have been reviewed.

Current achievements

- 1.3 The SLA is based around a number of key principles (and targets) to drive social value. Based on this, the scheme includes:
 - Space for around 80 businesses or organisations
 - The majority of business form the local area (70% of businesses from local area, due to an allocations policy agreed with the Council)
 - 232 jobs + 180 co-working members
 - At least 8 affordable units at 50% of the costs elsewhere on the site
 - 1 hour per week volunteered by each tenant to the Community Investment Scheme to support the local community or other local businesses
 - 170 members of Impact Hub Brixton
 - A programme of schools/youth outreach
 - The event space made available free (but subject to rate card for incidentals) to the local community for 25% of the time
 - Rerezent Radio – a youth radio station, employing 6 people and broadcasting across London
 - Pop Farm – an urban growing project, used for education and engagement

2 Proposal and Reasons

The rationale for extending the lease – responding to an evolving business model

- 2.1 Given the delays to the delivery of the Brixton Central masterplan, it has now become clear that a further extension to the lease is desirable. This report recommends extending the operating lease period until 30 October 2020, with the site to be returned cleared by 30 November 2020.
- 2.2 All of the tenants of Pop Brixton are SME's, many of whom were start-ups at the point of joining Pop. During this time a number have grown into successful businesses. However, the uncertainty of having year on year leases can make it difficult to effectively plan. By extending the lease until October 2020, Pop will be able to issue leases to the tenants until this time, securing both tenants for Pop, as well as offering security and stability for the tenants. It should be noted that both Pop and its tenants are required to contract out of the Landlord and Tenant Act 1954 to ensure they do not benefit from security of tender so that the Council can get full and unfettered access to the site once the head lease with Pop Brixton comes to an end.
- 2.3 The final build costs for Pop Brixton are £1,867,415, for 1400 sqm, which shows a large change in scope from the original forecast of £423,720 for 774 sqm. This represents a change from the original bid in which there were limited food and retail spaces and larger maker spaces. The original management costs were £214,000, over two years. However, given the change of scope which has meant addition of such services as security and the provision of public bathrooms, these are now projected as £3,214,148 up to October 2018 (3 ½ years). There is a projected additional investment of £294,486 in cap-ex & maintenance costs expected to be spent on the site until October 2020.
- 2.4 All of these costs are borne by Pop Brixton, but, due to additional borrowing that has been necessary in order to facilitate the increase, the project has been exposed to a larger risk. By extending the lease time, we are giving the project more time to pay back the loans, as well as more time to deliver social outcomes.
The lease extension also benefits the Council, as it should allow the project to deliver income via the profit share arrangement.
- 2.5 Furthermore, to offset some of these costs, in the 2016/17 financial year, Pop entered into a revenue share arrangement of 13.5% with the bars on site, based on an open book relationship. This has helped to pay for added security and the running of the site. Pop introduced a revenue share of 12.5% for the more successful street food businesses, 10% for restaurants and 10% for retail. The bars revenue share will be increased to 15% at the end of their current lease in October 2017. These shares will remain static should the head lease and therefore the tenants' leases be extended until November 2020. Under this rent model, the more successful businesses will pay slightly more rent, and reduce the rent of those who are not performing as well or are earlier in their growth stage.

The Service Level Agreement

- 2.6 It will be necessary and opportunistic to make some amendments to the SLA that sits alongside the lease agreement. The proposed amendments are set out below:
- A dedicated business support function for tenants 2 days a week
 - Work with tenants and the Brixton BID to implement a discount card for local workers and businesses by December 2017
 - Limit the rent increases at the Impact Hub to a maximum of 5% per year. For all other businesses the increase is a maximum of 10% per year

- An agreement to pay a base rent to the Council from October 2018, which will be netted off the final profit share paid to the Council.

3 Finance

- 3.1 The extension of the lease will allow Pop Brixton to generate more income which will contribute to the 50% profit share arrangement with Lambeth Council.
- 3.2 Its forecasted by Pop Brixton that the project will recoup its initial build costs by 2019 and will begin to generate profit.
- 3.3 The extension of the lease is subject to Pop Brixton paying a base rent (to be agreed in consultation with the Valuation & Strategic Property service) for the period October 2018 – November 2020. The payment of rent will reduce the profit share by an equivalent amount.
- 3.4 Pop Brixton has not been liable for any rent from its opening in May 2015. At the time of its opening, the Valuation & Strategic Property service estimated the rental figure for the undeveloped site at £39,000 per annum.

4 Legal and Democracy

- 4.1 Under Section 1 of the Localism Act 2011 Local Authorities have a general power of competence, this means that a Local Authority can do anything that an individual can do.
- 4.2 Section 123 of the Local Government Act 1972 provides that the council can dispose of land in any manner it wishes, save that it is not permitted to dispose of land, otherwise than by a lease of less than 7 years, at less than the best consideration that can reasonably be obtained, without the consent of the Secretary of State.
- 4.3 Any agreement that grants exclusive possession of the site, may in accordance with the law set out in Landlord and Tenant Act 1954 Part II, create a tenancy, which would, if not contracted out part II of the Landlord and Tenant Act 1954 become secure after 6 months.
- 4.4 Section 149 of the Equality Act 2010 requires the Council in the exercise of its functions to have due regard to the need to:
- eliminate discrimination, harassment, victimisation and other form of conduct prohibited under the act; and,
 - to advance equality of opportunity and to foster good relations between persons who share a relevant protected characteristic (age, disability, gender re-assignment, pregnancy and maternity, race, religion and belief, sex, and sexual orientation) and persons who do not share it.
- 4.5 Having regard to the need to advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share it involves having due regard, in particular, to the need to:
- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - take steps to meet the needs of the persons who share that characteristic that are different from the needs of persons who do not share it; and,
 - encourage persons of the relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

- 4.6 The Equality Duty must be complied with before and at the time that a particular policy is under consideration or decision is taken – that is, in the development of policy options, and in making a final decision. A public body cannot satisfy the Equality Duty by justifying a decision after it has been taken.
- 4.7 The Council's Constitution requires that issues of an important or sensitive nature will be published on the Council's website for five clear days prior to the decision being taken (Constitution, Part 2, Section 3), where this is required by the Cabinet Member or Director concerned. It is suggested that this proposed decision is published on Officer Decisions in the interests of transparency. Any representations received during this period must be considered by the decision-maker before the decision is taken.

5 Consultation and co-production

- 5.1 Pop Brixton was awarded the lease for the site after an open competition, with six responses. There was significant opportunity for local people, stakeholders and young people to listen and question the contestants and inform which project was successful. While the project has evolved, the core aspects have remained in line with the successful proposal.

A Pop Brixton steering group meets quarterly, and is currently chaired by Ward Councillor for Coldharbour, Councillor Matt Parr. Membership includes Council officers and representatives from the local community and interest groups.

6 Risk management

- 6.1 The main risk of not taking forward the recommendations in this report are that the project would not be financially viable and could fail. This would have a significant negative impact on the social and economic outcomes that could have been delivered to the local community and economy. There is also significant reputational risk to the Council.
- 6.2 The key risk in relation to the lease extension is that the Council may require the site back prior to the proposed new date, to maximise a long-term development opportunity. This is seen as low as the programme for the long-term development has been extended.

7 Equalities impact assessment

- 7.1 Equalities issues have been considered by the Steering Group as part of the Service Level Agreement with Pop Brixton and there are not adverse consequences on the protected characteristics.

8 Community safety

- 8.1 Community safety has been addressed for this site through the Planning and Licensing process.

9 Organisational implications

None.

10 Timetable for implementation

- 10.1 The current lease agreement expires on 13 October 2018. However, should a new lease be issued until 2020, the Pop tenants lease, will be amended accordingly.

Audit trail

Consultation				
Name/Position	Lambeth directorate/department or partner	Date Sent	Date Received	Comments in para:
Rachel Sharpe	Director of Strategic Programmes	09.08.17	11.08.17	
Paul Badiani, Finance	Business Partnering	27.6.17	13.7.17	3
Raman Dale, Legal Services	Corporate Resources	27.6.17	10.7.17	4
Henry Langford, Democratic Services	Corporate Resources	08.08.17	08.08.17	4.7
Councillor Matthew Bennett	Cabinet Member: Planning, Regeneration and Jobs	09.08.17	10.08.17	
Sue Foster	Strategic Director, Neighbourhoods and Growth	21.12.17	22.12.17	

Report History	
Original discussion with Cabinet Member	10.08.17
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	No
Background information	Officer Delegated Decision Report, 06 April 2015 Brixton High Street Fund, Pop Brixton co-working space
Appendices	None

APPROVAL BY OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board and taken account of their advice and comments in completing the report for approval:

Signature: _____ **Date:** _____

Post: Nicola Whyte
Delivery Co-Ordinator, Brixton

I approve the above recommendations:

Signature: _____ **Date:** _____

Post Sue Foster Strategic Director for Neighbourhoods and Growth

Any declarations of interest (or exemptions granted): None

Any conflicts of interest: None

Any dispensations: None