
Decision Maker:	PORTFOLIO HOLDER FOR RENEWAL, RECREATION & HOUSING
	For Pre-decision Scrutiny by RRH PDS Committee
Date:	Wednesday 16 March 2022
Decision Type:	Non-Urgent Non-Executive Non-Key
Title:	ORPINGTON FIRST BUSINESS IMPROVEMENT DISTRICT (BID) RENEWAL 2023-2028
Contact Officer:	Auden Powell, Town Centres and BID Development Manager E-mail: auden.powell@bromley.gov.uk
Chief Officer:	Sara Bowrey, Director of Housing, Planning & Regeneration
Ward:	Orpington, Petts Wood and Knoll, Cray Valley East

1. Reason for report

- 1.1 This report seeks Portfolio Holder authority for a renewal ballot of the existing Orpington First Business Improvement District for another term of 5 years, commencing March 2023 and expiring April 2028.

2. **RECOMMENDATION(S)**

That Members of the Renewal, Recreation and Housing PDS Committee:

- 2.1 **Note and make comments on the content of this report to the Portfolio Holder.**

That the Portfolio Holder for Renewal, Recreation and Housing:

- 2.2 **Notes the headline BID levy rules and emerging key priorities of the Orpington First BID for its third term.**

- 2.3 **Agrees to delegate authority to the Director of for Housing, Planning and Regeneration that upon**

- **being notified that the BID proposer wishes to put proposals for a Renewal BID to a ballot, to review the final version of the BID Renewal Proposal which is expected to be delivered to the Authority by 24th April 2022 and**

- **being satisfied that the BID Renewal Proposal has been submitted in accordance with Business Improvement Districts (England) Regulations 2004 (Regulations) and does not conflict with any of the Council's priorities and plans, and that its geographic scope is within the boundaries of the London Boroughs scope is within the boundaries of the London Borough of Bromley, to instruct the Ballot Holder to hold the BID ballot in July 2022 in accordance with the regulations.**
- 2.4 Agrees to delegate authority to the Director for Housing, Planning and Regeneration that upon review the final version of the BID Proposal to vote on behalf of the Council for eligible Council-occupied hereditaments which fall within the proposed BID area (these are listed in Table 1, paragraph 3.20).**
- 2.5 Notes the potential for additional costs to the Council in the event of a no vote and that a further report setting out options be submitted for members consideration in that event.**

Impact on Vulnerable Adults and Children

1. Summary of Impact:

BIDs foster the resilience and prosperity of local economies and help create and protect local employment, including for vulnerable adults. BIDs also provide support mechanisms to the wider business community, including a diverse range of national charities including Mind and Dementia UK.

Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Supporting Vibrant, Thriving Town Centres
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Financial

1. Cost of proposal: One-off cost: £3,000
 2. Ongoing costs: £1,174 per annum
 3. Budget head/performance centre: Town Centre Management & Business Support
 4. Total current budget for this head: £79k
 5. Source of funding: Existing Controllable Revenue Budget 2022/23
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Personnel

1. Number of staff (current and additional): 1
 2. If from existing staff resources, number of staff hours: 29 hours
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Legal

1. Legal Requirement: Non-Statutory
 2. Call-in: Applicable
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Procurement

1. Summary of Procurement Implications: N/A
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Businesses within Orpington Town Centre, especially up to 353 business rates payers who are likely to be BID Levy Payers from April 2023 – March 2028.
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Ward Councillor Views

Ward Councillors were separately updated with a Briefing Note requesting their comments and support. To date Cllr Botting, Cllr Owen, Cllr Bear, Cllr Keith Onslow, Cllr Tunnicliffe and Cllr Fawthrop are all in support.

3. COMMENTARY

Background

- 3.1 The Orpington First BID was launched in 2013 for a term of 5 years until 2018. Following a successful first term, its business community voted for a second term of 5 years which expires in March 2023. Businesses in the Orpington First BID area have now expressed a desire for another term of 5 years from 2023 to 2028.
- 3.2 In preparation for the end of the current BID term, the Orpington First BID Board and management team undertook some initial feasibility work which confirmed an appetite within the local business community for a renewal of the BID mandate to continue for a third 5 year term. The Board plans to issue notice of its intention to hold a ballot to the Secretary of State (as required by BID Regulations) on 29 April 2022. The Board also plans to consult with levy payers in preparation for the ballot to be held in July 2022.
- 3.3 In proposing a third term of the BID, Orpington First BID had previously commenced and will continue a number of staged actions in preparation for the ballot and the new BID term. These stages will be agreed between the BID and the Council as a mini project plan to help ensure compliance with the industry standard and democratic mandate for the establishment and renewal of BIDs:
 - Feasibility Stage – establishing the initial need or case for the renewal of a BID, assessing business interests, testing the financial feasibility based on business rates data, raising awareness and publicising the process involved.
 - Planning Stage – including establishing the vision, undertaking research and in-depth consultation, modelling the potential BID levy rules and creation of the BID Proposal.
 - Local Authority Stage – including developing the Operating and Baseline Service agreements, agreeing and setting up the ballot process and agreeing a ballot timetable, creating a voter database and agreeing an updated BID levy collection processes. This stage will involve some input from various Council teams, with the lead taken by the Town Centres & BID Development Manager. Significantly for renewal ballots, this process is more concerned to highlight and focus on the details of change being proposed for the new BID term than the continuity of services provided.
 - Campaign Stage – Establishing the voters at each business, communications with voters, ballot monitoring and agreeing contingency for failure to secure a successful ballot.
 - Establishment/Renewal Stage – including preparation for launch, setting up billing procedures, governance arrangements, staffing and recruitment.
- 3.4 A copy of the outline Orpington First BID Proposal 2023 – 2028 report containing a summary of the consultations, the proposed BID levy rules and the activities to be delivered through the BID will be provided in a separate report to the Portfolio Holder

under delegated authority. The BID Proposal as referred is scheduled for readiness and completion by the BID company in consultation with the Council in April 2022. Due to local government elections in May and therefore this report being brought to an earlier committee meeting than normal, the Proposal is still under preparation and not available for consideration as part of this report.

Risks and Issues for the Council

- 3.5 The Business Improvement District Regulations (England) 2004 require a BID proposer to request that the Local Authority holds a ballot on the BID Proposal. The parameters of this decision are framed by the legislation – and these are set out in paragraph 7.
- 3.6 In the financial years 2020/21 and 21/22 some businesses were not able to pay the BID levy due to the adverse impact of COVID-19. This scenario was not accounted for in the original Operating Agreement with the Orpington First BID and therefore a variation to this contract was agreed with the Council. In order to address this issue, due consideration to the ongoing risks of Covid-19, and other potential unforeseen future circumstances, in terms of the form of implications and contingencies for the Council will be incorporated and reflected in a revised Operating Agreement for the new BID term 2023-2028.
- 3.7 As a BID can only be established by a secret postal ballot, there is a risk that regardless of the consultation and expected result, it may be that the ballot does not lead to a favourable outcome and in this scenario there may be a financial implication for the Council. In the event of an unsuccessful ballot, the businesses may look to the Council to provide a town centre service, including Christmas lights. In order for the Council to provide a minimalist approach to managing the town centre, the annual staffing impact has been identified as £50k per annum. As Christmas lights cost in the region of £20k per annum for Orpington, there may be a financial implication of up to £70k per annum in the event of an unsuccessful ballot. In such an event, a further report setting out options would be presented for consideration by Members.

Consultation of Orpington businesses

- 3.8 As Orpington First BID has been operating since its inauguration in April 2013 there has been continuous feedback from the levy payers throughout its two terms, a process encouraged by the BID Board. This was essential to ensure that project delivery reflects the expectations of the businesses and facilitates knowledge and understanding of the appetite for proceeding to seek a third BID term.
- 3.9 The Planning Stage, incorporating a more structured consultation process, was agreed at an Orpington First BID Forum meeting which was an open meeting attended by Board Directors and Orpington BID levy payers. At this meeting the Board's approach was confirmed to seek a renewal ballot in July 2022.

BID Proposal 2023-2028

- 3.10 A draft Business Proposal will be submitted to the Council for review by 24 April 2022. During the third term the BID is expected to raise approximately £1.14m over the five year period through the BID levy to invest in the town centre. During the first and second terms the BID achieved approx. £370k and £260k additional income respectively through:
 - Rental income through Orpington First BID pop-up shop project

- Subletting of office space
- Stall holder fees in Orpington town centre events
- Promotional space hire
- Ticket sales for events
- Sponsorship of town centre events
- Advertising in The Orpington 1st Magazine
- Central government grants
- Local authority grants

3.11 The consensus amongst levy payers, arising out of the consultation undertaken to date, is for the BID to continue to deliver along similar priority work themes as during the 2nd term. Some of the activities currently undertaken will continue but there are a number of new activity programmes and projects which will deliver key themes for the Orpington BID. The section below provides a brief headline and description of each theme.

- **For Customers**

By enhancing Orpington's image and bringing more people into town through an exciting calendar of events and a broad promotional and marketing campaign.

- **For Look & Feel**

By improving Orpington's appearance as a pleasant and welcoming high street, and the safety and security of businesses and customers.

- **For Access**

By making Orpington a more accessible and inclusive town centre.

- **For Business**

By increasing members' profitability and lobbying for their interests.

- **For Investment**

By identifying and encouraging the most appropriate and relevant investment to the town.

3.12 In the Feasibility and early Planning stage, assumptions were made that have been retained throughout the research stages. These were that:

- a. In the event of a new term of renewal there would be a threshold of £5,000 rateable value, beneath which businesses within the area would not be subject to a levy and so would not be balloted. The reason for this is that the levy collected from these very small premises will be so low as to make collection uneconomical.
- b. The cap of £20,000, being the maximum amount paid by any one hereditament would likely remain in place.

3.13 For information, the table below sets out the previous headline BID Rules for the Orpington First BID. The new BID levy rules for term 3 are under review however they are likely to remain similar to the previous term:

The levy rate to be paid by each hereditament is to be calculated at 1.5% of its rateable value as at the Chargeable Day (1st April in each year).

All hereditaments with a Rateable Value of £5000 or above will be eligible for payment of the levy. (The number of hereditaments liable for payment of the levy is circa 325)
Each year the levy rate will be increased by a fixed rate of inflation of 2% per annum.
The levy will be charged annually in advance for each chargeable period, to be April to March each year. No refunds will be made.
The maximum amount payable for any one hereditament each year to be capped at £20k
Owners of untenanted buildings would be liable for the levy.
Occupiers of covered shopping centres, already paying service charges in addition to rent and rates, to pay 75% of the levy that would otherwise apply.
Charitable organisations that are subject to relief on their business rates liability will pay 75% of the levy that would otherwise apply (excluding those eligible for discount as Shopping centre tenants).
The London Borough of Bromley will be responsible for collection of the levy. The parameters of this responsibility, including collection charges to the BID, are to be set out in the Operating Agreement.

Implications of BID renewal

- 3.14 Based on the proposed BID levy rules above and barring any significant changes in the rateable values within the BID area, the total investment which would arise from the BID levy will be £1.14m over the 5 year term. This is a significant level of private sector investment to help ensure that Orpington town centre remains competitive within London and the South East. In terms of financial impact on the businesses, although there are a small number of national businesses who will be making a significant contribution to the BID budget, the average annual levy bill will be just under £590 per hereditament.
- 3.15 It is important to note that for a BID Proposal to be successful at ballot it must meet two key criteria:
- a. More than 50% of votes counted must be in favour, and
 - b. More than 50% of the rateable value represented by the vote must be in favour
- 3.16 This means that the Orpington First BID Board must again persuade at least the number of voters that make up a minimum of 50% of the rateable value to vote in favour, and therefore to ensure that businesses with multiple hereditaments or properties with large rateable value support the BID in the planned ballot. A focussed programme of engagement has been conducted with managers and potential voters with the higher rateable value organisations to enable a detailed understanding of their expectations in the event of renewal of the Orpington First BID.
- 3.17 In the event of the BID ballot being successful, delivery of the activities set out in the Orpington First BID Business Plan would largely be the independent responsibility of Orpington First Ltd (a Company Limited by Guarantee). This would mostly be a continuation of current arrangements. The Board of Directors will continue to be drawn from businesses of varying sizes and from different sectors within the BID area. A list of the current board members will be included in the final BID Business Plan. The

Board and BID team will continue frequent communication with relevant Council officers and Councillors and invite local authority representatives to meetings as appropriate.

- 3.18 Further, with the Walnuts Shopping Centre owners (Areli), proposing a hugely significant development for the town centre, securing a strong mandate for a third term sooner rather than later, will enable Orpington First BID to instil early confidence in businesses and help navigate the town through a period of likely significant transformation regardless of the outcome of the Arelli planning application.
- 3.19 The Operating Agreement will govern how the London Borough of Bromley and the Orpington First BID cooperates on the operation of the BID – including how the BID levy will be collected and transferred to the BID company. The Operating Agreement includes a Baseline Statement, defining the services being delivered by the Council within Orpington Town Centre and which are scheduled to continue during the prospected third term of the Orpington BID. Whilst the delivery of these services will remain the responsibility of the relevant Council service areas, the BID retains the option to introduce additional (special) services to enhance the existing baseline.
- 3.20 The main revenue implication for the Council over the 5 years of the BID, is the liability to pay the BID levy on Council-occupied hereditaments which are located within the BID area. Assuming no changes to the Council’s occupation of commercial premises, the total potential charge to the Council over the five year period is expected to be £5,868.75.

Table 1: Council owned properties in the Orpington First BID area

Council Building £	Rateable Value £	Bid Levy in First Year £	Estimated BID levy over 5 years £
2 nd Flr Offices, The Walnuts	55,500	832.50	4,162.50
Saxon Centre Lych Gate	22,750	341.25	1,706.25
Total	£78,250	£1,173.75	£5,868.75

- 3.21 In the financial years 2020/21 and 21/22, many businesses were not able to pay their BID levy due to the adverse impact of COVID-19. As referred earlier, this scenario was not accounted for in the original Operating Agreement with the Orpington First BID and therefore a variation to this contract was agreed with the Council. In order to address any similar issue in the future the Operating Agreement for the new BID term 2023-2028 will ensure that there are no costs to the Council if a lower percentage of the levy is collected than expected.
- 3.22 As explained in para 3.7 above, a BID can only be established by a secret postal ballot. There is a risk that this will not result in a favourable outcome and in this worst-case scenario there may be a financial implication for the Council of up to £60k depending on the scope of the town centre service and Christmas lights provision that is continued. In that event, a further report setting out options would be presented for consideration by Members.

4. POLICY IMPLICATIONS

- 4.1 A core objective of the Orpington BID is to foster the improvement, enhancement and promotion of this major town centre in partnership with the Council's wider ambition to encourage Vibrant and Thriving Town Centres. It is therefore recommended that the Council supports the renewal of the Orpington First BID as the best means of ensuring that the town centre continues to be managed effectively and enable it to flourish and develop positively into the future, in partnership with the Council.

5. FINANCIAL IMPLICATIONS

- 5.1 As part of the Council's statutory duty under the BID Regulations, the Council has to fund the cost of any BID ballot. For the Orpington BID, this is estimated to be £3k. This will be funded from the Town Centre Management budget for 2022/23.
- 5.2 The cost to the Council of the levy on Council-occupied hereditaments would continue to be funded from existing revenue budgets.
- 5.3 In the event of an unsuccessful ballot, a further report setting out options and would be presented for consideration by Members setting out potential financial implications to the Council.

6. PERSONNEL IMPLICATIONS

- 6.1 The Council's only ongoing staff input for the Orpington BID is to provide an Officer as an advisory member of the board and this arrangement is expected to continue. The administration of the levy collection involves both Liberata and Council staff – and this is expected to also continue in the event of a renewed BID term. Costs related to these services are recharged annually to the BID company. There will be no staffing changes as a result of a prospectively successful renewal of the Orpington First BID.

7. LEGAL IMPLICATIONS

- 7.1 Business Improvement Districts (BIDs) were introduced by Part 4 of the Local Government Act 2003 (LGA 2003).
- 7.2 Their establishment, enforcement and operation is regulated by the LGA 2003 and the Business Improvement Districts (England) Regulations 2004 (SI 2004/2443) as amended(Regulations
- 7.3 Orpington First Ltd, retained the lead responsibility for the delivery of the Orpington First BID from the existing term 2018 to 2023. Orpington First BID Ltd is now formally requesting the Councils approval to ballot its business area for a further 5 year term – from March 2023 to April 2028.
- 7.4 Whilst there is no statutory obligation on the Council to establish a BID, there is a statutory process to follow if a Bid Renewal Proposal is submitted to the Council as billing authority.
- 7.5 The Regulations require the BID proposer at least 84 days before sending a notice in writing requesting the billing authority to instruct the ballot holder to hold a BID Renewal ballot, to notify the billing authority and the Secretary of State in writing of the proposer's intention of asking the relevant billing authority to put the BID Renewal proposals to a BID Renewal ballot. Paragraph 2.2 of this report would appear to meet the desired time-line set out

- 7.6 Where a submission from the BID Renewal proposer is received the Council must be satisfied that the submission from the BID Renewal proposer includes a copy of the BID Renewal proposal; details of the consultation undertaken; details of the finances and financial management of the BID e.g., the Business Plan.
- 7.7 The Council must also be notified that the BID Renewal proposer wishes to put proposals for a BID Renewal to a ballot, and the BID Renewal proposer needs to ask the billing authority to instruct the Council's returning officer (the ballot holder) to hold a ballot.
- 7.8 The Regulations requires the Council to satisfy itself that the BID Renewal Proposal does not conflict with any Council policies or priorities, has been generated in accordance with the BID Regulations and is within its jurisdiction (i.e. the proposed BID boundary falls wholly within the Local Authority's boundary), nor does it propose a disproportionate burden on particular businesses by way of an unfair levy charge on a certain 'class' of levy payers, for example by an inappropriate manipulation of the BID boundary. These are the only criteria on which a Council can reject an application for a BID Renewal ballot or veto the outcome of a ballot.
- 7.9 The Council's Constitution under Part 3 'Responsibility for Functions' under Functions exercised by the Full Executive provides that all Executive decisions other than those specifically listed as being exercised by the Full Executive, shall be taken by the member of the Executive with Portfolio responsibility for the matter in question. Under the Executive Procedure Rules 1.3 (a) the Portfolio Holder may delegate such decisions to an Officer.
- 7.10 Council service teams will work closely with Orpington First Ltd to draft and finalise the Operating and Baseline Agreements which are legally required for the formation of the BID. These are described as follows:
- Operating Agreement – The Operating Agreement covers the arrangements for the billing, collection and payment of the BID levy collected to the BID Company. This will place an obligation on the Council to take certain steps to secure payment of the levy and in the event of failure to follow the specified steps to pay the relevant sums to the BID Company itself.
 - Baseline Statement – The Baseline Statement forms a Schedule to the Operating Agreement and summarises those statutory and standard non-statutory services provided by the Council which may potentially overlap with services to be provided by the BID. This provides reassurance to the BID company and levy payers that the levy income would only fund other/additional services, not those currently being provided. The baseline statement describes the services provided by the Council and will not, save to the extent that any services amount to a statutory requirement, constitute a binding commitment on the Council to continue to provide these in the future. A draft version of the Baseline Statement will be available to the Director for Housing, Planning and Regeneration under delegated authority at the appropriate time and prior to the ballot of Orpington businesses.
- 7.11 Should there be a requirement for Orpington First BID to commission any other services from the Council, then Legal will draft a further agreement for any additional services which the Council or other agent may provide.
- 7.12 Furthermore, where the Council is a non-domestic ratepayer in relation to a hereditament situated in the area to be comprised in such proposals then certain rights

are given to the Council including the right to be included in the ballot and to vote. In this respect the recommendations in this report seeks a delegation giving authority to the Director for Housing, Planning and Regeneration to vote Yes.

Non-Applicable Sections:	Procurement; Impact on vulnerable adults and children
Background Documents: (Access via Contact Officer)	<p>Orpington Business Improvement District (BID) Proposal – Renewal for 2018-2023. 5th July 2017 (DRR17/036)</p> <p>Business Improvement District Proposal for Orpington 12 Sept 2012 (DRR12/106)</p> <p>Orpington Improvement District Proposal Part 2 Report to R&R PDS Committee (report no: DRR12/080) 10 July 2012 Proposed Business Improvement District for Orpington Part 1 Report to R&R PDS Committee (report no: DRR11/096) 11 October 2011</p>