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<b>Decision Maker:</b>	<b>RENEWAL, RECREATION AND HOUSING PORTFOLIO HOLDER</b>
<b>Date:</b>	<b>For Pre-Decision Scrutiny at the Renewal, Recreation and Housing Policy Development And Scrutiny Committee on 14th June 2022</b>
<b>Decision Type:</b>	Non-Urgent                      Executive                      Non-Key
<b>Title:</b>	<b>PENGE BUSINESS IMPROVEMENT DISTRICT (BID) RENEWAL 2023-2028</b>
<b>Contact Officer:</b>	Auden Powell, Town Centres and BID Development Manager E-mail: auden.powell@bromley.gov.uk
<b>Chief Officer:</b>	Sara Bowrey, Director of Housing, Planning & Regeneration
<b>Ward:</b>	Penge and Cator

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## 1. Reason for decision/report and options

- 1.1 This report seeks Portfolio Holder authority for a renewal ballot of the existing Penge SE20 Business Improvement District for another term of 5 years, commencing 1st April 2023 and expiring 31<sup>st</sup> March 2028.

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## 2. RECOMMENDATIONS

**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 Penge SE20 BID for its 5 year term.**

- 2.3 Agrees to delegate authority to the Director of 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 31<sup>st</sup> August 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 on October 13<sup>th</sup> 2022 in accordance with the regulations.**
- 2.4 Agrees to delegate authority to the Director for Housing, Planning and Regeneration that upon review of 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 2, paragraph 3.16).**

## 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.
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## Corporate Policy

1. Policy Status: Existing Policy
  2. Making Bromley Even Better Priority: For people to make their homes in Bromley, and for business, enterprise and the third sector to prosper.
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## Financial

1. Cost of proposal: One-off cost: £7,400. This constitutes £2,400 for holding the ballot, and £5,000 for costs associated with interface with the BID for high street recovery (details in 5.1).
  2. Ongoing costs: £2,635 p.a. for levy on own assets
  3. Budget head/performance centre: Economic Development
  4. Total current budget for this head: £126k
  5. Source of funding: Existing Controllable Revenue Budget 2022/2023
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## Personnel

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

1. Summary of Property Implications: N/A
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## Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications: N/A
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## Customer Impact

1. Estimated number of users/beneficiaries (current and projected): The businesses within Penge Town Centre, specifically the 251 business rates payers who are expected to be BID Levy Payers from April 2023 to March 2028.
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## Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: Full support for the proposal for a second term of the Penge SE20 BID and acknowledgment of its success in making a significant and positive impact to the High Street and community.

## **3. COMMENTARY**

- 3.1 For its first term, the Penge SE20 BID was launched in 2018 for a term of 5 years until 2023. Following a successful first term, the BID Board voted to support a ballot for a second term of 5 years from April 2023 to March 2028. Its most prominent successes include the Street Rangers patrol focussing on anti-social behaviour at peak periods such as during school holidays and support for business grant programmes such as the Covid Retail, Hospitality, Leisure grants, Vacant unit and Booster Grants programme.
- 3.2 In preparation for the end of the existing BID term, the Penge SE20 BID Board and its 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 second 5 year term. The BID Board plans to issue notice of its intention to hold a ballot to the Secretary of State (as required by BID Regulations) on June 8<sup>th</sup> 2022. The Board also plans to consult with levy payers in preparation for the ballot to be held on October 13<sup>th</sup> 2022.
- 3.3 By committing to a second term, the Penge SE20 BID commenced a number of staged actions in preparation for the ballot in anticipation of a new 5 year 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 and comprise:
- 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 process. 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 concerned to highlight and focus on the details of change being proposed for the new 5 year BID term and the continuity of services being 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 draft Penge SE20 BID Proposal 2023 – 2028 containing a summary of the consultations, the proposed BID levy rules and the activities to be delivered by the BID will be provided to the Portfolio Holder under delegated authority in early June 2022. The draft BID Proposal is still under preparation and currently not available for consideration as part of this report. The final BID Proposal will be presented to the Council on or by August 31<sup>st</sup> 2022.

#### 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 initial Operating Agreement with the Penge SE20 BID and therefore a variation to this contract was agreed. In

order to address this issue, due consideration to the ongoing risks of Covid-19, and other potential unforeseen future circumstances will be given. These will take the form of implications and contingencies for the Council which will be incorporated and reflected in a revised Operating Agreement for the prospective new BID term 2023-2028.

- 3.7 As a BID can only be established by a secret postal ballot, there remains a risk that regardless of the consultation, 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 expect 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 the Penge town centre, there may therefore 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 Penge businesses

- 3.8 As the Penge SE20 BID has been operating since its commencement in 2018, there has been continuous feedback from the levy payers throughout its first term, 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 seeking a second BID term. A feasibility study on behalf of the PengeSE20 BID argued a very low risk of a 'no' vote.

#### BID Proposal 2023-2028

- 3.9 A draft Business Proposal will be submitted to the Council for review in early June 2022. During the second term, the BID is expected to raise in excess of £600k over the five year period through income raised from BID levy.
- 3.10 The consensus amongst levy payers, arising out of the consultation undertaken to date, is for the Penge SE20 BID to continue to deliver along similar priority work themes as during the first term. These themes include safety and security, improving the cleanliness of the shopping environment, promoting the town centre and connecting the community.
- 3.11 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.

For information, Table 1, below outlines the proposed BID levy rules for the Penge SE20 BID.

#### **Table 1.**

The levy rate to be paid by each hereditament is to be calculated at 2% of its rateable value as at the Chargeable Day (1 <sup>st</sup> 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 251)
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.
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.
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 Penge Operating Agreement.

- 3.12 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
- 3.13 This means that the Penge SE20 BID Board must again persuade at least the number of voting business voters that make up a minimum of 50% of the rateable value to vote in favour, 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 Penge SE20 BID.
- 3.14 In the event of the BID ballot being successful, delivery of the activities set out in the Penge SE20 BID Business Plan would be the responsibility of the Penge SE20 BID 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.
- 3.15 The Operating Agreement will govern how the London Borough of Bromley and the Penge BID cooperates in relation to 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 the BID area of Penge Town Centre and which are scheduled to continue their delivery during the prospected additional 5 year term of the Penge SE20 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 provision of services in the existing baseline schedule.
- 3.16 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 premises, the total potential charge to the Council over the five year period is anticipated to be as indicated in the following table:

**Table 2.**

Council Hereditament	BID levy in Year One (£)	Estimated 5 year total (£)
Car Park - Penge East Station	335	1,675
Offices - Croydon Road	2,300	11,500
<b>Total</b>	<b>2,635</b>	<b>13,175</b>

Source: *Liberata*

- 3.17 There are also associated costs of £5K for business engagement, high street data collection and analysis, and communications required for effective town centre management.
- 3.18 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 Penge SE20 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.
- 3.19 In terms of financial impact on the businesses, although there are a number of national businesses that make a significant contribution to the Penge SE20 BID budget, the average annual levy bill will be approximately £486 per hereditament. The Council will endeavour to negotiate a competitive cost for annual levy collection guided by the industry standard as proposed by British BID’s.
- 3.20 As set out in para 3.7 above, a BID can only be established by a secret postal ballot. There remains a risk, though small, that the result could reveal an unfavourable outcome and in such an adverse scenario, there may be a financial implication for the Council of up to £70k depending on the scope of the town centre service and Christmas lights provision that may be continued. In such an event, a further report setting out options would be presented for consideration by Members.

#### **4. POLICY IMPLICATIONS**

- 4.1 A core objective of the Penge SE20 BID is to foster the improvement and promotion of Penge 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 Penge SE20 BID as the best means to ensure that the town centre continues to be managed effectively and significantly, enabling it to flourish and develop positively into the future, in partnership with the Council.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 Where a BID agrees to support a ballot, then as part of the Council’s statutory duty under the BID Regulations, it has to fund the cost of a BID ballot. For the Penge SE20 BID, this is estimated to be £2,400 to fund the cost of the ballot plus additional communication costs of £5k as set out in section 3.17. As in previous years’, service officers would seek to meet these costs from within existing Economic Development budgets, but this will need to be kept under review as part of the budget monitoring process.
- 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 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 Penge 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 5 year term. Costs related to these services are recharged annually to the BID company. There will be no staffing changes as a result of a prospective successful renewal of the Penge 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 The Penge SE20 BID Ltd, retained the lead responsibility for the delivery of the BID from the existing term 2018 to 2023. Penge BID Ltd is now formally requesting the Councils approval to ballot its business area for a further 5 year term – between March 2023 and 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 the relevant 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 and to notify the billing authority and the Secretary of State in writing of the proposer's intention to ask the relevant billing authority to put the BID Renewal proposals to a BID Renewal ballot.

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 the 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 to 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 the Penge SE20 BID 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 usually provided as standard service provision. 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 businesses in the Penge BID.

7.11 Should there be a requirement for the Penge SE20 BID to commission any other services from the Council, then the Councils Legal Service 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.

<b>Non-Applicable Sections:</b>	Procurement; Impact on vulnerable adults and children
<b>Background Documents: (Access via Contact Officer)</b>	PENGE BUSINESS IMPROVEMENT DISTRICT (BID) RENEWAL 2022-2027 FOR 2018-2023 7 <sup>TH</sup> NOVEMBER 2017 (DRR17/051)