

**Report for:** Cabinet Member Signing - Special Urgency 29 March 2018

**Title:** Management Agreement with Homes for Haringey for Housing Services

**Report authorised by :** Helen Fisher, Interim Director of Housing, Regeneration and Planning

**Lead Officer:** Dan Hawthorn, Director of Housing and Growth

**Ward(s) affected:** All

**Report for Key/  
Non Key Decision:** Key decision

**1. Describe the issue under consideration**

- 1.1 On 16<sup>th</sup> January 2018 Cabinet agreed to enter into a new Management Agreement with Homes for Haringey, and that this new Management Agreement should run until 2026, subject to the Council's right to terminate the Agreement earlier following review on 31<sup>st</sup> March 2021. It further agreed to an application being made by officers to the Homes and Communities Agency (HCA) pursuant to section 27 of the Housing Act 1985 to seek approval for the new Management Agreement. (As of January 2018 the HCA's regulation directorate, which undertakes the functions of the Regulation Committee, refers to itself as the Regulator of Social Housing, or RSH).
- 1.2 It was anticipated by officers that the application for section 27 consent would have been determined by the RSH within six weeks of the application being submitted on 2<sup>nd</sup> February 2018. However on 22 March 2018, the RSH indicated that the application will be further delayed for reasons outside of the Council's control.
- 1.3 The current Management Agreement – dated 7<sup>th</sup> September 2011 (the “2011 Agreement”) – was extended – insofar as it was necessary to do so, and for the avoidance of doubt – by the Leader of the Council on 12 June 2017. In her decision the Leader ratified:
- (i) the continuation of the 2011 Agreement with Homes for Haringey for all purposes, beyond 31st March 2016 and continuing until the HCA determines the Council's application for approval of the new proposed management agreement;
  - (ii) and the performance by Homes for Haringey of all the management functions undertaken by it on the Council's behalf in pursuance of section 27 of the Housing Act 1985, and in accordance with the 2011 Agreement, with effect from 1 April 2016.

- 1.4 These ratifications had effect both retrospectively and prospectively.
- 1.5 The Leader's decision of 12 June 2017 was not time limited. However the clause in the 2011 Agreement relating to duration and renewal (clause 62) provides that the Agreement can be extended for a maximum of two years beyond its original expiration date of 31<sup>st</sup> March 2016. The effect of clause 62 of the 2011 Agreement is therefore that it is not capable of being extended beyond 31 March 2018.
- 1.6 In view of the fact that the proposed new Agreement will not be approved by the RSH before 31 March 2018, it is proposed that a decision is taken to vary clause 62 of the 2011 Agreement to permit an end date beyond 31 March 2018 in the manner set out in section seven below. This will ensure the continuity of housing services within current arrangements for the period between 31 March 2018 and the RSH making a decision on the application regarding the new Management Agreement.

## **2. Cabinet Member Introduction**

Not applicable

## **3. Recommendations**

It is recommended that the Cabinet Member for Housing, Regeneration and Planning:

- 3.1 Notes that Homes for Haringey has exercised housing management functions on the Council's behalf, as permitted by section 27 Housing Act 1985, from 1<sup>st</sup> April 2006.
- 3.2 Notes that on 16<sup>th</sup> January 2018 Cabinet agreed that, having regard to the results of the consultation carried out with Council tenants pursuant to section 105 of the Housing Act 1985, and the non-statutory consultation with Council leaseholders, and subject to the approval of the Homes and Communities Agency, the Council should enter into a new Management Agreement with Homes for Haringey, and that this new Management Agreement should run until 2026, subject to the Council's right to terminate the Agreement earlier following review on 31<sup>st</sup> March 2021.
- 3.3 Notes that on 16<sup>th</sup> January 2018 Cabinet also agreed to an application being made by officers to the Homes and Communities Agency pursuant to section 27 of the Housing Act 1985 to seek approval for the new Management Agreement.
- 3.4 Notes that on 12 June 2017 - insofar as it is necessary to do so, and for the avoidance of doubt – the Leader ratified the continuation of the 2011 Agreement with Homes for Haringey for all purposes, beyond 31<sup>st</sup> March 2016 and continuing until the HCA determines the Council's application for approval of the new proposed management agreement and ratifies the performance by Homes for Haringey of all the management functions undertaken by it on the

Council's behalf in pursuance of section 27 of the Housing Act 1985, and in accordance with the 2011 Agreement, with effect from 1 April 2016.

- 3.5 Notes that clause 62 of the 2011 Agreement relating to duration and renewal means that it is currently not capable of being extended beyond 31 March 2018.
- 3.6 Approves the variation to the end date of the 2011 Agreement – and the definition of the phrase “The Term” – attached at appendix 1 so that it will expire 28 days after the date the Council is notified by the Regulator of Social Housing of its determination pursuant to the Council's request for approval to the making of a new Agreement with Homes for Haringey.
- 3.7 Notes that Homes for Haringey is agreeable to the variation.

#### **4. Reasons for decision**

- 4.1 It is necessary to extend the 2011 Management Agreement as the new Management Agreement approved by Cabinet on 16 January 2018 will not have received consent from the Regulator of Social Housing (RSH) prior to 31 March 2018. This is due to a delay by the RSH in determining the outcome of the Council's application for consent for the new Management Agreement.
- 4.2 The Cabinet Member is also referred to the exempt report which also contains information in support of the reasons for this decision.
- 4.3 Officers and legal advisers consider that the most effective method of extending the 2011 Agreement is by way of variation to the clause regarding duration and renewal (clause 62). This clause will be varied so that the 2011 Agreement will expire 28 days after the date the Council is notified by the Regulator of Social Housing of the result of its request for approval.

#### **5. Alternative options considered**

- 5.1 An option would be to let the 2011 Agreement expire, and for the Council to then take the services back in house. However, the Council is not equipped to take the services back at short notice, and so officers do not consider that to be a viable alternative option.

#### **6. Background information**

- 6.1 On 7<sup>th</sup> September 2011 the Council entered into the 2011 Agreement, being for Housing Management and Other Services, with Homes for Haringey. This was to expire on 31st March 2016, with an option to extend, as provided for within the agreement. On 15th September 2015, Cabinet resolved as a result of the Future of Housing Review that Homes for Haringey should be retained as the Council's Arm's Length Management Organisation with a new contract for 10

years, to expire on 31st March 2026. It further resolved that approval of the new agreement be brought back to Cabinet for approval no later than March 2016.

- 6.2 On 15th March 2016 Cabinet considered a report which appended a draft version of the new 10 year management agreement. The report sought Cabinet approval for this agreement and to delegate authority for the Chief Operating Officer to enter into the agreement on behalf of the Council. Within the report it was acknowledged that the new management agreement would require the approval of the Secretary of State under section 27 (in fact the HCA). Cabinet was informed that legal advice had been taken which had confirmed that, subject to anything unforeseen happening, no difficulties were envisaged in obtaining consent.
- 6.3 The report addressed the possibility that approval might not be obtained until after 31st March 2016 and that “there would be a need for the existing management agreement to roll over to regulate service delivery until such time as consent is obtained if after 1st April 2016”. As at the date of the Cabinet meeting, no application for approval had yet been made. There was nothing within the report to suggest that if approval was not obtained by 1st April 2016 any of the functions being undertaken by Homes for Haringey should revert to the Council and nor was any such recommendation made by officers. As the Council has no members of staff who could undertake those functions, more than 600 odd having been transferred to Homes for Haringey in 2006, such a temporary reversion would have been unfeasible. It would also have been contrary to the Cabinet report of 15th September 2015, where the option of returning housing management functions to the Council had been considered, but rejected.
- 6.4 On 8th June 2017, an email from the HCA was received. The HCA have stated that having reviewed the application, responses to their enquiries and representations made by residents, it is of the view that there had been insufficient consultation with tenants about the renewal of the agreement with Homes for Haringey for a further 10 years. It asked the Council to undertake tenant consultation before it will consider the application further.
- 6.5 At all times since 1st April 2016 Homes for Haringey has continued to provide all the services to be provided to the Council under the 2011 Agreement, in accordance with the term of that 2011 Agreement. The Council has continued to pay the management fee.
- 6.6 On 12 June 2017 - insofar as it is necessary to do so, and for the avoidance of doubt – the Leader ratified the continuation of the 2011 Agreement with Homes for Haringey for all purposes, beyond 31st March 2016 and continuing until the HCA determines the Council’s application for approval of the new proposed management agreement and ratifies the performance by Homes for Haringey of all the management functions undertaken by it on the Council’s behalf in pursuance of section 27 of the Housing Act 1985, and in accordance with the 2011 Agreement, with effect from 1 April 2016.

- 6.7 On 12<sup>th</sup> January 2018 Cabinet received a report setting out the results of a consultation carried out with tenants and leaseholders on the proposal to retain Homes for Haringey. There were almost 1,200 responses to the statutory consultation with secure tenants, of whom 81% agreed with the proposal to enter into a new Management Agreement with Homes for Haringey. In the non-statutory consultation with leaseholders, there were just over 200 responses and 49% agreed with the proposal.
- 6.8 In light of the results of the consultation as well as the reasons set out in previous Cabinet reports and the Future of Housing Review, Cabinet agreed that the Council enter into a new Management Agreement with Homes for Haringey, and that this new Management Agreement runs until 2026, subject to the Council's right to terminate the Agreement earlier following review on 31<sup>st</sup> March 2021. Cabinet also agreed to an application being made by officers to the Homes and Communities Agency (since renamed the RSH) pursuant to section 27 of the Housing Act 1985 to seek approval for the new Management Agreement.
- 6.9 An application was made by officers on 2<sup>nd</sup> February 2018. On 22<sup>nd</sup> March 2018 the RSH wrote to the Council to notify of a delay in making a decision on the application. The delay was due to the fact that it had received a letter dated 7<sup>th</sup> February 2018 from solicitors acting for the Haringey Leaseholders Association, and a Council secure tenant which it required comments from the Council on.

## **7. Extension to the 2011 Management Agreement**

- 7.1 Officers and legal advisers consider that the most effective method of extending the 2011 Agreement is by way of variation to the clause regarding duration and renewal (clause 62) – and the definition clause on “The Term”. This clause will be varied so that the 2011 Agreement will expire 28 days after the date the Council is notified by the Regulator of Social Housing of its determination pursuant to the Council's request for approval to the making of a new Agreement with Homes for Haringey. Appendix 1 contains the proposed variation to the 2011 Agreement.

## **8. Special urgency and Call-In and urgency**

- 8.1 The Council's Constitution provides that, in normal circumstances, at least 5 clear days' notice will be given of any meeting (Part Four, Section D, Rule 4). However, in respect of “key decisions” (which are reserved to the Leader, Cabinet, a Committee of the Cabinet or individual Cabinet Member or the Chief Executive as per Part 4, Section F, Rule 1.3), the Constitution requires that, in addition to the normal 5 days' notice, a notice of intention to make the decision has been made available for 28 clear days (Part Four, Section D, Rule 13).
- 8.2 The 28-day and 5-day notice requirements are, however, subject to the general exception in Rule 16 and the special urgency procedures in Rule 17. Rule 16

applies where it is impracticable to give the 28 days' notice of intention, but the procedure still requires that 5 clear days' notice is given of the decision to be made. Rule 17 applies where compliance with Rule 16 is impracticable (i.e. the decision must be taken before the expiry of 5 clear days). In such cases, the decision can only be made with the agreement of the Chair of the relevant Overview and Scrutiny Committee (or, if unable to act, the Mayor or – in the Mayor's absence – the Deputy Mayor) "that the taking of the decision is urgent and cannot reasonably be deferred".

8.3 The decision to extend the Management Agreement with Homes for Haringey by way of variation to the clause relating to duration and renewal and pending the consent of the RSH to the new Management Agreement is clearly a key decision.

8.4 The use of the special urgency procedure is justified because:

(i) the 2011 Agreement expires on 31 March 2018 and cannot (as currently drafted) be extended beyond that date, even by agreement between the parties. As such it is not practicable to comply with either the 28-day notice requirement in Part Four, Section D, Rule 13 or the 5-day notice requirement in Part Four, Section D, Rule 4. If the decision is deferred, it would then be too late to put in place the proposed arrangements for the interim period until the as yet unknown date on which the RSH makes a decision on the application for a new Management Agreement.

(ii) the reason for the urgency arises because the Council was only notified by the RSH on the 22<sup>nd</sup> March 2018 that the decision was delayed and would not be made before 31<sup>st</sup> March 2018. Since that date, it was necessary for officers to consider the issue with Counsel in order to advise on the best way to resolve it.

(iii) If the decisions recommended by this report are not taken, the 2011 Agreement would end on 31<sup>st</sup> March 2018 and there would be no Management Agreement governing the services delivered by Homes for Haringey on behalf of the Council.

(iv) For the above reasons, coupled with the content of the exempt report, officers advise that the conditions in Part Four, Section D, Rule 17 are met.

8.5 Further, reliance is also placed on Part Four, Section H Rule 18 of the Constitution. That rule enables urgent key decisions to be taken without the need to apply the Call-In Procedure Rules where the action being taken is "urgent or time critical". Urgency is defined by Rule 18(b) as being where "any delay in implementation likely to be caused by the call-in procedure would seriously prejudice the Council's or the public's interests".



8.6 Officers advise that the test on what is “urgent or time critical” and that “any delay in implementation likely to be caused by the call-in procedure would seriously prejudice the Council’s or the public’s interests” is met for the reasons set out at paragraph 8.4 above.

8.7 In accordance with Part Four, Section D, Rule 17, and Part Four Section H, Rule 18 of the Constitution, Councillor Wright has been consulted on this report in his capacity as the Chair of Overview and Scrutiny Committee, and his agreement was obtained.

## **9. Contribution to strategic outcomes**

9.1 The adoption of a Management Agreement contributes to the strategic outcomes under Priority 5 of the Corporate Plan, and provides the framework that enables the Council to ensure that Homes for Haringey continues to deliver and improve the services it provides.

## **10 Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)**

### **Finance and Procurement**

10.1 There are no new financial implications due to this decision. Budgets for the relevant functions have already been agreed by Cabinet and will continue to be managed by Homes for Haringey.

### **Legal**

10.2 The Assistant Director, Corporate Governance has been consulted in the preparation of this report, and his views, and any legal implications, are set out in the report.

### **Equality**

10.3 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

10.4 Cabinet took into consideration the Council’s public sector equality duty when on 16<sup>th</sup> January 2018 it authorised entry into the new Management Agreement. The present decision raises no new equalities considerations.

## **11 Use of Appendices**

11.1 Appendix 1: Variation to the 2011 Management Agreement

## 12 Local Government (Access to Information) Act 1985

- 12.1 Report of the Steering Group in the Future of Housing Review, 15<sup>th</sup> September 2015: <https://www.minutes.haringey.gov.uk/mgAi.aspx?ID=46305>
- 12.2 Management Agreement with Homes for Haringey for Housing Services, 15<sup>th</sup> March 2016:  
<https://www.minutes.haringey.gov.uk/ieIssueDetails.aspx?IId=51755&PlanId=0&Opt=3#AI48197>
- 12.3 Management Agreement with Homes for Haringey for Housing Services, 12<sup>th</sup> June 2017:  
<https://www.minutes.haringey.gov.uk/ieListDocuments.aspx?CIId=773&MIId=8408>
- 12.4 Homes for Haringey Management Agreement, 16<sup>th</sup> January 2018:  
<https://www.minutes.haringey.gov.uk/mgAi.aspx?ID=55808>