

Report for: **Cabinet 13 November 2018**

Title: **Report on the progress of establishing a Wholly Owned Company for Housing development and various decisions required to facilitate the Council's Housing delivery Programme**

Report

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

Ward(s) affected: **All**

Report for Key/

Non Key Decision: **Key Decision**

## **1. Describe the issue under consideration**

- 1.1. Cabinet received a report on 17 July 2018 recommending the setting up of a Wholly Owned Company (the Company) to help deliver the Council's target of 1,000 new Council homes at Council rents by 2022. This report notes progress made in developing the Company since that meeting. It also makes some key decisions to enable the next steps in bringing forward the first sites for development.
- 1.2. But this report also notes that the announcement in the 29 October Budget of the lifting of the cap on Housing Revenue Account (HRA) borrowing is a fundamental shift in the policy landscape. The implications of this change, and the potential to operate a very different HRA, need to be fully considered before finalising many of the decisions that the July Cabinet asked to come back to a future meeting. This is because, along with the GLA funding now being made available to Councils to deliver Council housing, this opens up fundamentally different ways of delivering the objectives set for the Company than would have been possible at the time this administration was elected.
- 1.3. As a consequence, the decisions that will now be finalised at a Cabinet meeting in early 2019 are:
  - The appointment of the initial Company Directors of the Company
  - The appointment of members of the Shareholder Board for the Company
  - The Objects Clause and Articles of Association of the Company, the Shareholders' Agreement between the Council and the Company and any other necessary agreements required between the Council and the Company.
  - All further legal documentation necessary to the setup of the Company.
  - The capital and revenue budgets to be made available to the Company.
  - Further delegations to agree and sign off the business cases for future Company development sites.

- The financial limits for future delegated decisions, and where Cabinet decisions will be required.
  - The first business plan for the Company, and disposals of land to the Company necessary for this.
- 1.4. However, to maintain the momentum of delivery and press ahead rapidly with the first sites for development, this report makes recommendations on key related areas, including:
- The first sites that will be built out in the Council's housing development programme.
  - Working capital being made available to begin delivery on those sites.
  - The grant funding being made available to the Council in the GLA's Building Council Homes for Londoners programme.
  - A Right to Buy "ringfencing deal" with the GLA.
  - The reversal of a previous Cabinet Member decision to dispose of HRA land to Sanctuary Housing Association and proposals for those sites.

## **2. Cabinet Member Introduction**

- 2.1. Haringey's new administration was elected in May on a bold manifesto, which placed housing at its heart. Our Manifesto committed to deliver at least a thousand new council homes at council rents by 2022, a scale of council house building not seen since the 1970s. This is the latest report putting in place the programme to deliver these homes.
- 2.2. Our stated preference in the Manifesto was to build council housing directly through a company we fully own. But this was at a time when the GLA funding was not available and was before the announcement, in the October budget, of the scrapping of the HRA borrowing cap. We now need to take a little time to consider what these changes mean for housing delivery in the borough, the role that the proposed Company can best play in making that delivery happen and the extent to which the HRA can now support the house building programme, before we finalise any decisions on forming the Company. We will come back in the New Year with our proposals on the Company.
- 2.3. But, in the meantime, we must not pause in our efforts, or lose any momentum in pressing ahead with delivery. This report asks Cabinet to make some key decisions to get started on our Council housing development programme.
- 2.4. It identifies the first sites to come forward with the GLA funding, including bringing back sites that the last administration had passed over to a Housing Association to build shared ownership and Affordable Rent homes, on which we will instead be building Council homes at Council rents. It also provides the initial funding necessary to start work on these first sites and asks Cabinet to agree to accept over £62m of GLA housing grant to help us deliver 848 affordable homes over the next four years. This GLA funding is a major vote of confidence in this Council and its capacity to deliver its housing programme and will be key to funding the bulk of the 1,000 new Council homes that we are pledged to deliver.

## **3. Recommendations**

It is recommended that Cabinet:

- 3.1. Note progress made in setting up the Company as set out in paragraphs 6.1 -6.3 of this report and that the recommendations in the Cabinet report of 17 July 2018 which were to come back to Cabinet later in 2018, will now come back to Cabinet in early 2019.
- 3.2. Note the Government's announcement in the 2018 Budget to lift the cap on borrowing in the Housing Revenue Account and that officers will bring back a revised HRA Business Plan identifying the opportunities this presents for new housing development.
- 3.3. Note the six Council owned sites identified as priority 1 sites in the GLA grant funded programme detailed in paragraph 6.8 and that business cases will be brought to Cabinet on the development of these sites, including whether to proceed on these via the Company or within the HRA.
- 3.4. Establish a Housing development programme budget of £4.4m to continue with the development of sites with the budget to be funded from the resources set out below.
- 3.5. Approves that for 2018/19 the S106 funding of £1.516m previously allocated for delivery of schemes through Sanctuary Housing Association, as set out in paragraph 6.9, is added to the HRA capital programme to fund the Council's housing development programme budget and to pay Sanctuary Housing Association £0.339m.
- 3.6. Approves the virement of £1.5m in 2018/19 from the HRA Stock Acquisition budget to the Housing development programme budget in accordance with Standing Order 5.32(b).
- 3.7. Approves the virement of £1.4m in 2018/19 from the HRA - P5 Homes for Haringey (HFH) budget to the Housing development programme budget in accordance with Standing Order 5.32(b).
- 3.8. Accept the GLA offer of £62.858m housing grant and add that sum to the capital programme.
- 3.9. Delegate the detail of negotiating the grant agreements is delegated to the Director of Housing, Regeneration and Planning after consultation with the Director of Finance and the Cabinet Member for Housing and Estate Renewal.
- 3.10. Agree, in principle, to the Council signing-up to the Mayor of London's proposal to enable the Council to access the proposed ring fence of right to buy receipts, as set out in paragraph 6.25 of this report.
- 3.11. Agree to reverse the Cabinet Member decision of 23 January 2017 to dispose of 20 HRA infill sites to Sanctuary Housing Association and instead utilise these sites to deliver the Council's housing development programme, either within the Company or in the HRA. This includes three sites identified as phase 1 sites in paragraph 6.8, ten further sites being brought into later phases of the GLA grant funded programme and seven sites being put onto the GLA's small sites portal as detailed in paragraph 6.10. These sites will be brought back to a future Cabinet to agree disposals.

- 3.12. Agree to reimburse Sanctuary for their development costs of £338,758 on these sites in return for all surveys, searches, fees and designs and warranties undertaken to date on these sites, which will all novate to the Council and that the cost be met from the Housing development programme budget.

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

- 4.1. On 17 July 2018 Cabinet agreed to the setting up of the Company, subject to the documents needed for its incorporation being agreed by Cabinet. The Articles of Association and Memorandum of Understanding (shareholders' agreement) and other documentation of the Company are being drafted by Pinsent Masons solicitors, the Council's external legal advisors. The formal setting up of the Company will not now be agreed until early 2019, when the full implications of the lifting of the HRA borrowing cap are understood.
- 4.2. The Council's housing development programme will initially develop on Council owned sites. Cabinet is asked to note the six Council owned sites identified as priority 1 sites in the GLA grant funded programme detailed in paragraph 6.8, as well as the sites detailed in paragraph 6.10, which are proposed for the GLA small sites programme. Business cases for these six will be developed and brought back to a future Cabinet for decision, including whether to proceed via the Company or within the HRA.
- 4.3. The Council's housing development programme requires initial capital funding of £4.4m to work up the sites to planning stage. Other funding will be secured as the sites are developed from GLA grants and s106 offsite contributions, alongside possible sales revenue from the market homes developed that can cross-subsidise the affordable housing.
- 4.4. The agreement with the GLA to ring-fence Right to Buy receipts will ensure that the receipts will always be spent on affordable housing within the Borough and will not have to be returned to Government after three years if unspent.
- 4.5. The decision not to proceed with the disposal of the Phase 2 infilled sites to Sanctuary will mean these sites can now be used to deliver the Council's housing development programme, which would not have been possible under the previous Cabinet decision.

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

- 5.1. The formation of the Company was agreed by Cabinet on 17 July 2018, with the detail being left for agreement at a future meeting. Articles of Association and Memorandum of Understanding (the Shareholder Agreement) have been drafted, along with recommendations on all other key decisions. However, agreeing these and setting up the Company too soon may hinder the Council's ability to deliver the housing development programme in the most effective way.
- 5.2. A decision to set up the Company and dispose of sites to it immediately could mean missing the opportunity of fully using the potential of the HRA borrowing capacity. Delaying the setting up of the Company until the new year will allow

time for the HRA business plan to be reviewed and for exploring all the options for the housing development programme.

- 5.3. The other key decisions, on identifying the sites (including the former Sanctuary sites), agreeing the initial capital funding and accepting the GLA grant offer and the Right to Buy Ringfence deal) could all have been delayed until the decisions on the Company were agreed. However, this would have prevented any progress being made on these sites until after the decision on the Company. This would be an unnecessary delay, as this initial work is required whether the homes are delivered via the Company or in the HRA. It could also be a costly delay, as the GLA grant requires the initial starts on site in 2019/20.

## **6. Background information**

- 6.1. Following the 17 July 2018 Cabinet decision to set up a wholly owned company to help deliver the Council's target of delivering 1,000 new Council homes by 2022, work has progressed on the details of how the Company will be set up and operate.
- 6.2. Legal advice has been obtained from Pinsent Masons, who have experience of setting up similar companies.
- 6.3. Drafting of the Company's Articles of Association and Memorandum of Understanding (Shareholders' Agreement) has commenced. Once completed the documents will be brought back to a future Cabinet meeting for a decision.
- 6.4. In the Budget of 29 October 2018 the Chancellor announced the lifting of the Housing Revenue Account (HRA) borrowing cap. This means that the HRA could now be in a position to borrow to fund much, or even all, of the proposed Council housing development programme, rather than this having to be undertaken primarily through the proposed Housing Company.
- 6.5. Officers are working through the implications of this announcement and how it can support the Council's housing development ambitions. A new HRA Business Plan is being developed that will scope out the level of new housing development programme the HRA can support alongside the commitments already made to bring the existing Council homes to the Decent Homes standard by 2022. This will come to Cabinet in the New Year, alongside the recommendations on the Company.

## **Proposed Council Housing Development Programme**

- 6.6. As set out in the July Cabinet report, in the first instance, the programme will focus on developing medium sized sites – usually more than ten and less than 150 homes – which are in Council ownership.
- 6.7. A list of Council owned sites has been identified by their potential for early development, with the priority 1 sites being those immediately deliverable. Further sites have been identified that require additional development work or are expected to become deliverable in later years. These were included in the bid for funding to the GLA, but are not detailed in this report. They will be brought back to future Cabinet meetings when they are deliverable.

6.8. Cabinet is asked to note the six Council owned sites identified as priority 1 sites detailed in the table below. Business cases will be brought to a future Cabinet on the development of these sites, which will include whether to proceed via the Company or develop within the HRA, together with phasing and disposal method (leasehold, freehold, development licence or other mechanism) to ensure the most advantageous development mechanism.

Site	Start on site	Total homes	Ward
54-56 Muswell Hill Place N10 3RR	2018/19	6	Muswell Hill
Lealand Road, N15 6JS (infill ph2)	2019/20	2	Seven Sisters
Templeton Road N15 6RU (infill ph2)	2019/20	11	Seven Sisters
Brunel Walk N15 5HQ	2019/20	50	Tottenham Green
Edith Road, N11 2QW	2019/20	10	Bounds Green
White Hart Lane, N17 8LA (infill ph2)	2019/20	3	White Hart Lane
<b>Total</b>		<b>82</b>	

6.9. To help build the programme, 20 infill sites held within the HRA that the Cabinet Member agreed on 23 January 2017 to dispose to Sanctuary Housing Association through the 'infill phase 2 programme' will now be brought into the Council's housing development programme. This is not a reflection on Sanctuary as an organisation, as it is a valued local partner, nor on the work that Sanctuary has undertaken to date on bringing these sites forward, which has been of a very high quality. Rather it is because the Council now puts delivering new Council homes as its priority on its own land. The Council will pay Sanctuary £338,758 in return for all surveys, searches, fees and designs and warranties on these sites, which will all novate to the Council. In addition, £1.518m of s106 affordable housing commuted sums that was already allocated to the phase 2 sites is recommended to be brought into the Council's HRA capital programme to partially fund the Housing development programme to support the delivery of the maximum number of Council rented units.

6.10. Three of these sites (Lealand Road, Templeton Road and White Hart Lane), which can deliver up to 16 homes, are rapidly developable and will be brought into phase 1 of the Council's housing development programme. Up to ten further sites will be worked up and presented to a future cabinet for consideration for inclusion in the programme. The remaining seven sites: Nightingale Lane N8 7QX (Hornsey), Poynton Road N17 9SL (Tottenham Hale), Earham Grove N22 5HJ (Woodside), 82 Muswell Hill N10 3RR (Muswell Hill), Romney Close N17 ONT (Northumberland Park), Antill Road N15 4AS (Tottenham Hale) and Weir Hall Road N18 1EE (LB Enfield), which can together deliver 18 homes, will instead be put onto the GLA's small builders' portal. These are the smaller and trickier sites for the Council to develop. The GLA portal will market these sites to small builders, with priority being given to local SMEs.

6.11. The July Cabinet report specifically identified the Brunel Walk, Cranwood and Civic Centre sites for potential development. The latter two sites are not in the list of priority 1 sites in this report as further development and land assembly work is required before they can be brought back for a Cabinet decision, but they were both included in the bid for funding to the GLA.

### **Funding (Council lending and GLA grant bid)**

6.12. The Council will support the housing development programme through capital funding and by utilising its land holdings. Depending on the delivery solution chosen (HRA or Company) the developments will initially be funded through a blended resource base of borrowing, Flexible Housing Support Grant, GLA grant, S106 and potential cross subsidy from sales.

6.13. It is anticipated that during the period to March 2019 the programme will require up to £4.4m initial working capital, for architects, engineers, employers agents, surveys and other technical and planning fees to achieve planning permissions and starts on site. This funding will be made available within the HRA to commence bringing the first sites forward, transferring to the General Fund at a later date if these sites come forward through the Company rather than in the HRA.

6.14. The GLA has recently completed a Building Council Homes for Londoners bidding round for affordable housing grant and additional HRA borrowing, although the latter has now been overtaken by the Chancellor's announcement on lifting the borrowing cap. The Council has taken an ambitious approach to securing resources to fund and support the delivery of the housing development programme. The Mayor announced the GLA Housing Grant allocation in mid-October offering the council £62.858m to deliver 848 affordable homes of which 567 are social rented homes and 281 are London Living Rent/Shared Ownership.

6.15. The grant is subject to contract on the basis of standard form grant agreements and conditions contained in the GLA Capital Funding Guide, (<https://www.gov.uk/guidance/capital-funding-guide>) to which every Council and housing association receiving grant must sign up. This is similar to the grant agreement the Council signed as part of the infill phase 1 build programme. This report recommends that Cabinet accept the offer of grant and delegates the detail of negotiating the agreements to the Director of Housing, Regeneration and Planning in consultation with the Director of Finance and Cabinet Member for Housing and Estate Renewal. This funding will provide the most significant and critical proportion of the external funding required to achieve the target of delivering 1,000 new Council homes by 2022.

6.16. The GLA has also proposed a scheme to ring fence Right to Buy receipts as part of the Building Council Homes for London programme. This operates by the GLA agreeing that any Right to Buy receipts and interest it receives from central Government arising from Right to Buy disposals in the borough will be ring-fenced and made available to the Council as affordable housing grant. The GLA letter is attached at appendix 1 for information. If the Council signs up to the deal it will still receive and can still spend Right to Buy Receipts as at present. But

any receipts that it cannot spend within the three year limit could be recycled through the GLA and reallocated as grant to deliver new rented affordable homes, rather than being returned to the Government and lost to the Council as is currently required. It is proposed that the Council accept the Mayor's offer and commit to the intention to deliver a programme of housing developments on a three year rolling delivery programme, aligning with the delivery requirements of the receipts. This decision is, at this stage, an in-principle one which gives the Council an option for the future. It does not include a commitment to treat any retained receipts in this way immediately.

6.17. The GLA proposes to make the recycled Right-to-Buy grant funding available to the Council through a standard-form funding agreement. The Council will be able to claim grant not exceeding 30% of the full development costs of homes, as defined in the funding agreement. Under current rules, the landlord of the rented affordable homes delivered is required to be a Registered Provider at the point the homes are let, and, as with all Right to Buy receipts, the grant cannot be used in conjunction with other GLA affordable housing grant on individual homes.

## **7. Contribution to strategic outcomes**

7.1. Establishing the Council's housing development programme, whether delivered by the Company or in the HRA, will enable the Council to deliver new affordable homes in the borough. This supports the emerging 2019-2023 Borough Plan, which has as its first priority 'a safe, stable and affordable home for everyone, whatever their circumstances'. Outcome 1 of the housing priority in the emerging Borough Plan states that: 'We will work together to deliver the new homes Haringey needs, especially new affordable homes', with the specific objective of delivering 1,000 new Council homes at Council rents by 2022.

7.2. This aim is reflected in the Housing Strategy, in which the first objective is to: *"Achieve a step change in the number of new homes built"*. Under this objective the Strategy commits to *"Increase the supply of affordable homes for rent and for home ownership"* and that *"The Council will in particular aim to unlock the value in its own land to improve the viability of affordable housing"*.



## **8. Statutory officer comments**

### **Finance**

- 8.1. The report is recommending that a number of actions are taken in order to continue with the delivery of new Council homes on Council land.
- 8.2. The report is asking Members to accept the GLA offer of affordable housing grant and to add this to the Council's capital programme.
- 8.3. The report is asking Members to note the government announcement on the lifting of the HRA borrowing cap. The financial effect of this is currently being considered by officers and will be reported back to Members as part of the revised HRA business plan and will be incorporated into the Council's budget.
- 8.4. Prior to the revised HRA business plan being compiled the report is seeking a working capital budget of £4.4m to enable development work on sites to continue (and includes the payment to Sanctuary Housing Association for their work on the Ph2 infill sites). Care needs to be taken to ensure that the recommendations and the funding of them are in accordance with the budget and policy framework.
- 8.5. The report is recommending the establishment of a Housing development programme budget of £4.4m within the HRA capital programme to continue with the development works on the sites identified in the report. This budget is to be established by the following means.

In 2018/19 it is recommended that the £1.516m S106 funding hitherto earmarked to support the Sanctuary Housing Association developments is redirected to the Housing development programme budget. This budget will also pay for Sanctuary's works to date on the sites (£0.338m), and to fund development work between.
- 8.6. The report is also recommending that £1.5m is vired from the HRA stock acquisition budget to the Housing development programme budget and that £1.4m is vired from the HRA - P5 Homes for Haringey (HFH) budget to the Housing development budget
- 8.7. In addition, the report is seeking approval to accept the grant offer of £62.858m from the GLA to support the delivery of homes in Haringey and to add that sum to the Council's capital programme. The grant is subject to a number of conditions and it is extremely important that these are adhered to as failure to do so may result in expenditure being incurred that will not be funded by the grant.
- 8.8. Agreement is sought to the Council signing-up to the Mayor of London's proposal to enable the Council to access the proposed ring-fence of right to buy receipts. This scheme appears to rely on the Council returning receipts plus interest to the government who in turn would pass the resources on to the GLA who would then allocate the funding to the Council as affordable housing grant. Cabinet at its meeting of 17<sup>th</sup> July 2018 agreed to the establishment of a

community benefit society (CBS) and that this would be partly funded through the application of the current stock of retained right to buy receipts plus future receipts.

8.9. It is not clear whether the affordable housing grant allocated via the mechanism described would be capable of being used to fund the CBS. However, it is noted that the signing up to the agreement does not give rise to an obligation to use the agreement at this stage and further advice should be sought on the implications of using the agreement before any receipts are transferred.

## **Legal**

8.10. The Assistant Director for Corporate Governance has been consulted on the content of this report and there is nothing within that would prevent the recommendations from being agreed.

8.11. The Council is proposing to dispose of land held within the Housing Revenue Account. The Council has the power under section 32 of the Housing Act 1985 to dispose each of these sites but must obtain the consent of the Secretary of State. Where the site is vacant no specific consent is required, instead the Council will be able to rely on the General Consent for the Disposal of land held for the purposes of Part II of the Housing Act 1985-2013 but the conditions set out in the consent must be complied with.

8.12. The Council has statutory power under section 1 of the Localism Act 2011 to do anything that individuals generally may do. Under the secondary power contained within section 111 of the Local Government Act 1972 the Council has power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The Council can therefore accept the grant from the GLA. The grant will come with certain conditions that the Council will need to comply with. Further legal advice will be required when these conditions are known (including any repayment requirements).

## **Procurement**

8.13. Strategic Procurement notes the contents of this report and is supportive in the proposal to establish a wholly owned company. There are no procurement implications in establishing the company. Property and land related transactions are not subject to Procurement Regulations.

## **Equalities**

8.13. 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.

8.14. The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

8.15. The decision is to agree the governance arrangements, funding arrangements, and business plan of the Company for housing development, and note the Council-owned sites identified as priority 1 in the development sites list to the Company.

8.16. The strategic objective of the Company to increase housing supply in Haringey by delivering new build Council-owned homes, including Council rented housing, intermediate rented housing, intermediate housing for sale, private rented housing, and market sale housing. Delivery of new Council rented housing is likely to have a positive impact on individuals in temporary accommodation as well as those who are vulnerable to homelessness. Data held by the Council suggests that women, young people, and BAME communities are over-represented among those living in temporary accommodation. Furthermore, individuals with these protected characteristics as well as those who identify as LGBT+ and individuals with disabilities are known to be vulnerable to homelessness, as detailed in the Equalities Impact Assessment of the Council's Draft Homelessness Strategy. As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

8.17. Allocations for intermediate housing delivered through the Company will be made in line with the Council's Intermediate Housing Policy, approved by Cabinet in January 2018, and for which a full Equalities Impact Assessment was completed. Delivery of intermediate rented housing and intermediate housing for sale in line with the policy will primarily benefit individuals with fixed or lower incomes and social housing tenants. It follows that delivery of intermediate housing will have a positive impact for women, younger and older people, households where a member has a disability, BAME residents, and pregnant women and mothers of young children.

8.18. Delivery of private rented housing and market sale housing will cross-subsidise the supply of Council rented housing. Delivery of these types of housing will therefore have a positive impact on individuals with protected characteristics.

8.19. Delivery of mixed tenure developments will enable the Council to foster good relations between communities by facilitating diverse and sustainable communities.

8.20. Equalities considerations have been taken into account in the governance arrangements of the Company. Appropriate steps have been taken in order to ensure that there has been no direct or indirect discrimination at any stage in the appointment of the Board of Directors or the Shareholder Board. The Company's Articles of Association and Shareholder Agreement include appropriate equalities considerations.

8.21. Business cases will be brought to Cabinet on the development of the sites identified as priority 1. These business cases will be subject to Equalities Impact Assessments.

## **9. Use of appendices**

Appendix 1 GLA Right to Buy ring fence letter

Appendix 2 Equality Impact Assessment