

Report for: **Cabinet 12 February 2019**

Item number:

Title: **Establishment of a Wholly Owned Company for Housing Development**

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

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.
- 1.2. Subsequently, in November 2018, Cabinet received an update on the establishment of the Company which noted that following the announcement of the HRA borrowing cap being lifted, further consideration would be given how best to develop and hold the new council homes. As a result the purpose of the Company and its contribution to the Council's housing delivery programme has changed, as set out in paras 6.3 - 6.4.
- 1.3. This report sets out the decisions that have to be made by Cabinet to incorporate the Company including;
 - The appointment of the initial Directors of the Company
 - The adoption of the Articles of Association of the Company and the Memorandum of Understanding between the Council and the Company.

2. Cabinet Member Introduction

- 2.1. Haringey's new administration was elected in May 2018 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 structures 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 have now taken the time to consider what these changes mean for housing delivery in the borough, and the role that the Company can best play in making that delivery happen.
- 2.3. Our decision this evening creates the housing company we promised, to support the creation of new council homes for Haringey families on the waiting list. The housing company is therefore one of the initiatives which form part of our ambitious programme to create council homes at Council rents, the like of which we have not seen in a generation.

3. Recommendations

It is recommended that Cabinet:

- 3.1. Agree the Company's name as 'Haringey Housing Company Limited', and give delegated authority to the Director of Housing, Regeneration and Planning and the Chief Finance Officer (s151 Officer) to agree the final wording of the Articles of Association and Memorandum of Understanding as set out in draft form in appendices 1 and 2.
- 3.2. Agree that the purpose of the Company will be primarily to facilitate the Council's ambitions to deliver new homes and to hold homes developed by the Council that cannot normally be held in the Housing Revenue Account, for example intermediate and other non-social rented homes.
- 3.3. Agree the appointment of the following Directors of the Company:
 - A senior housing officer nominated by the Director of Housing, Regeneration and Planning;
 - a senior finance officer nominated by the Chief Finance Officer (s151 Officer) and
 - a senior legal officer nominated by the Monitoring Officer.
- 3.4. Agree the creation of a wholly owned subsidiary of the Company to be registered as a Registered Provider to be called the 'Haringey Housing Company Registered Provider Limited' (the "Company RP"); and give delegated authority to the Director of Housing, Regeneration and Planning and the Chief Finance Officer (s151 Officer) to agree the final wording of the Articles of Association and

Memorandum of Understanding as set out in similar draft form to the Company in appendices 1 and 2.

- 3.5. Agree that the purpose of the Company RP will be primarily to hold homes developed by the Council that would be held by the Company but are required to be held by a Registered Provider; and that Officers seek registration of the Company RP as a Registered Provider.
- 3.6. Agree that the composition of the Board of Directors of the Company RP shall be the same as the Board of Directors of the Company.

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 of the Company and the Company RP have been drafted by the Council's external legal advisors and Cabinet is being asked to consider these documents so the Company and the Company RP can be incorporated.
- 4.2. The July Cabinet Report described the primary purpose of the Company as being to maximise the delivery of new Council owned homes and this remains the primary aim of the Council's housing delivery programme. However, following the abolition of the HRA borrowing cap, the Company's role within the programme will be to support the Council's ambitions to deliver new homes, primarily by holding those homes that the HRA cannot.
- 4.3. The members of the Board of Directors of the Company need to be appointed. These will be Council officers, namely a senior officer nominated by the Director of Housing, Regeneration and Planning, a senior finance officer nominated by the Chief Finance Officer (s151 Officer) and a senior legal officer nominated by the Monitoring Officer. The Chief Finance Officer (s151 Officer), the Monitoring Officer and any officer with direct responsibility for planning have been deliberately excluded, to minimise the risk of conflicts of interest.
- 4.4. The creation of a subsidiary 'not for profit' Company RP is necessary for the Company to hold sub-market rented homes that have received housing grant from the GLA.

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. Recommendations within this report reflect advice from Pinsent Masons, the Council's external legal advisors in relation to the formation and running of the Company. The use of a detailed Objectives clause was considered and discounted to ensure that the Company could have scope to operate more freely in the future. (An Objectives clause can limit trading of the company, for instance to 'owning and managing sub market rental homes', whereas the Council may in future want the Company to be able

to develop/own community projects which under such an Objectives clause it would be unable to do).

- 5.2. The Articles of Association and Memorandum of Understanding are clearly drafted to give the Council the assurance that the Company will remain wholly owned and controlled by the Council, less clearly draft documents may lead to confusion or challenge in the future.
- 5.3. A wider range of director positions were considered but discounted; for instance including the Monitoring Officer or Chief Finance Officer (s151 Officer) or including external directors. These options were discounted to ensure potential conflicts of interest are avoided, to maximise the direct control by the Council of the Company and to allow the Council and the Company to operate in a proper and consistent manner.

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. This report and its attachments have been written taking that advice and experience into account.
- 6.3. As a result of the announcement of the abolition of the Housing Revenue Account (HRA) borrowing cap, the capacity of the HRA to finance the development of new homes, including by subsidising new development through existing surpluses, has greatly increased. This gives the Council significant new options for delivering its ambition for new homes.
- 6.4. In July the Cabinet report described the primary purpose of the Company as being to maximise the delivery of new Council owned homes. This remains the primary aim of the Council's housing delivery programme, however following the abolition of the HRA borrowing cap, the Company's role within the programme will be to facilitate the Council's ambitions to deliver new homes and to hold those rented homes that the HRA cannot.

Company structure and governance

- 6.5. The Company will be set up as a company limited by shares with a single share owned by the Council. The Company's Articles of Association (Appendix 1) detail how the Company will be run, governed and owned, defining the responsibilities of the directors, and the means by which the shareholder exerts control over the Board of Directors.
- 6.6. The Memorandum of Understanding (Appendix 2) regulates the relationship between the Council as shareholder, the management of the Company, ownership of the share, scheme of delegation and the protection of the shareholder.
- 6.7. All decisions to be taken about the Company (and Company RP) by the Council in its capacity as shareholder will be made by the Cabinet. This includes agreeing the Business Plan, direction and performance. Any changes in the purpose of the Company, its Articles, Memorandum of Understanding, or any other key decisions will also require subsequent shareholder - Cabinet agreement. Overview and Scrutiny Committee will scrutinise the direction and outcomes of the Company.
- 6.8. The Company will be managed by a board of three directors. It is recommended that a senior housing officer, a senior finance officer and a senior legal officer are appointed as directors in the first instance. The Directors will carry out the business of the company in accordance with good industry practice and all laws, objectives, provisions of the Articles of Association, the Memorandum of Understanding and Business Plan. Schedule 3 of the Memorandum of Understanding sets out the scheme of delegation for activities that require Shareholder and Director Approval. This makes clear, for example, that business plans of the Company are subject to approval by the Council as shareholder. These will need to be considered alongside business plans for the wider Council housing development programme. The Directors of the Company will be offered training, including in the avoidance of conflicts of interest, if needed. Directors will not be remunerated.
- 6.9. The Company will be a 'thin' body and will therefore not be employing anybody directly to run its affairs; instead all of its activities will be undertaken by Council officers. Systems will be developed to ensure that the resources expended by the Council and Homes for Haringey on delivering the Company objectives and managing its affairs are properly recorded and that appropriate charges to the Company are made to reimburse the Council and Homes for Haringey. Many of these reimbursements to the Council will be treated as capital expenditure and will ultimately be capitalised against the homes created.
- 6.10. The Company RP will be a 'not for profit' company wholly owned by the Company and managed by the same Directors as the Company. The Articles of Association and Memorandum of Understanding will follow model documents developed for Registered Providers and will be in a similar form to those for the Company in appendices 1 and 2.

Use of the housing company

- 6.11. Whereas it had originally been envisaged that the Company would play a central role as the developer of new housing, the lifting of the HRA borrowing cap now means that this role can and will be carried out from within the Council. This approach has a number of benefits, including less complex governance and accounting; lower rates of borrowing for the HRA than can be achieved for some work through the Company; and (significantly) the opportunity to use surpluses from existing HRA income, not needed for the maintenance of existing stock, to support further subsidy for new homes.
- 6.12. The Company will be used to support the Council's ambitions to deliver new homes, by holding homes developed by the Council that the Housing Revenue Account cannot usually hold. These are likely to include the intermediate rented homes developed as part of the Mayor's Building Council Homes for Londoners programme and any homes at private rented levels, should the Council decide that it wishes to develop these at some future point. The Company may also over time carry out further functions to support the programme and the Council's wider objectives, subject to the governance and approval mechanisms set out here.
- 6.13. The proposed subsidiary Company RP is required in the first instance to hold any sub-market rented homes that have received grant from the GLA as a condition of the housing grant. Registered Providers are regulated by the Social Housing Regulator to protect the interests of tenants, ensure providers are viable and provide value for money amongst other things.
- 6.14. Further Cabinet decisions will be required before any homes are transferred into, or funding is made available to, the Company or Company RP.

7. Contribution to strategic outcomes

- 7.1. Establishing a company for housing development will support the Council in delivering 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 is: *"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 current Cabinet proposals for the general fund capital programme include the following budgetary provision for the activities of the wholly owned company:

	£000's
2019/20	5,000
2020/21	8,000
2021/22	8,000
2022/23	8,000
2023/23	8,000
Total	37,000

8.2 This funding will be made available to the company in the form of loans at a rate that reflects the activity it is undertaking. Should the company own homes that charge sub-market rents then the loan to finance that activity could have a lower rate of interest than a loan to finance houses that have been built for rent at market rates. The advancing of the loans by the Council to the company will be subject to the agreement of a satisfactory business case and the entering into of a loan agreement between the Council and the company.

8.3 The company will be required in its business case to demonstrate that the homes will generate sufficient rental income to meet all the liabilities (repairs, maintenance, insurance, interest and loan repayments etc.) before a loan is advanced from the Council.

8.4 The budgetary provision referred to above has been included in the capital programme on the basis that the expenditure incurred by the Council (the making of loans to the company) will be more than offset by the income received from the company.

8.5 Cabinet at its meeting of the 17th July 2018 agreed to allocate £500k of flexible homelessness support grant to the establishment of the company. This will cover legal, financial and any other advice required. Where possible the costs incurred will be capitalised against the assets created.

Legal

8.6. 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.

8.7. The Council has statutory power under section 1 of the Localism Act 2011 to do anything that individuals generally may do. There are limits in section 4 of the Act as to when the Council can act for a commercial purpose. Where the Council

can do so the Council can only do things for a commercial purpose through a company. 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 has the power to set up the companies mentioned in the recommendations.

8.8. The Council is proposing to set up a Company RP, a wholly owned subsidiary of the Company that will be registered as a Registered Provider. It must register as a Registered Provider if it is to receive financial assistance from the GLA. A Registered Provider is defined in section 80 of the Housing and Regeneration Act 2008 as a provider of social housing. In order to be a Registered Provider the Company RP would need to be registered with the Regulator and must satisfy the eligibility conditions set in Section 112 of the HRA 2008. The Company RP must first meet condition 1 of the statutory eligibility requirements (section 112(2) of the HRA 2008) ie that it intends to become a provider of social housing in England and, once the Regulator has established that it meets these requirements, it will be assessed against the registration criteria that the Regulator has set (pursuant to section 112(3) of the HRA 2008). These criteria concern an applicant's financial situation, its constitution and other management arrangements.

Procurement

8.9. 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.

Equalities

8.10. 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.

8.11. 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.

- 8.12. 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.
- 8.13. 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.
- 8.14. 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. The Company's Articles of Association and Memorandum of Understanding include appropriate equalities considerations.

9. Use of appendices

Appendix 1 Company Articles of Association

Appendix 2 Company Memorandum of Understanding