

Report for: **Leader signing**

Title: **Council as owner of Homes for Haringey to approve Special Resolution, new Articles of Association, Member's Agreement and appointment of new Directors**

Report authorised by : **David Joyce, Director of Housing, Regeneration & Planning**

Lead Officer: **Benita Edwards** - Head of Legal Services - 020 8489 5935
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Ward(s) affected: **Not applicable**

**Report for Key/
Non Key Decision:** **Non-key**

1. Describe the issue under consideration

- 1.1 On 7 December 2021, Cabinet resolved that the Council's housing service which is currently provided by Homes for Haringey ("HfH") should be brought back in-house and delegated authority to officers to deal with the detailed implementation process including "*arrangements for continuing with a residual HfH legal entity to fulfil ongoing management of property leases held directly by HfH and used to provide homeless accommodation*" (further details of the decision taken by Cabinet are set out in paragraph 5.13 of this report).
- 1.2 HfH is a company limited by guarantee and the Council is the owner and sole Member of HfH. As such, it is for the Council to authorise adoption of a new Member's Agreement, Articles of Association and appointment of new Directors so that HfH may operate from 1 June 2022 with a new remit as outlined above. This report recommends that the Leader approves the said changes so that HfH may operate as stated.
- 1.3 Since the Cabinet report was approved on 7 December 2021, there are a number of legacy issues which will need to be resolved after 1 June 2022. In order to meet this objective, this report recommends that the Leader approves HfH's ability to continue to provide housing services to the Council as required. In addition to future-proofing HfH, that will also enable HfH to continue as the counter-party to contracts with third parties, the benefit of which will be for the Council, whilst action is taken to terminate, assign or novate these contracts as required.

2. Recommendations

It is recommended that the Leader, acting on behalf of the Council in its role as owner and sole Member of HfH:

- 2.2 approves the Member's Agreement (Appendix C to this Report), which shall apply to HfH with effect from 1 June 2022.
- 2.3 approves the Articles of Association (Appendix B to this Report), which shall apply to HfH with effect from 1 June 2022.
- 2.4 appoints Robbie Erbmman, Josephine Lyseight and Judith Page as Directors of HfH with effect from 00.01am on 1 June 2022.
- 2.5 approves the Special Resolution (Appendix A to this Report) to adopt new Articles of Association, enter the Members Agreement and appoint new Directors in accordance with Recommendations 2.2, 2.3 and 2.4.
- 2.6 approves that with effect from 1 June 2022, the remit and objectives of HfH shall be:
 - a. to provide private sector leases to the Council for the provision of short term tenancies;
 - b. to provide housing services to the Council;
 - c. such other matters as notified by the Council in writing.
- 2.7 delegates authority to the Chief Executive of the Council, in consultation with the Leader and the Lead Member for Housing Services, Private Renters and Planning, to exercise the role of the Council as sole member of HfH in relation to the future appointment and / or removal of Directors of HfH.

3. Reasons for decision

- 3.1 In accordance with the decision of Cabinet on 7 December 2021, a Termination Agreement will shortly be finalised and signed by the Council and HfH. Some of the key provisions of the Termination Agreement are as follows:
 - i. to terminate the current Management Agreement between the Council and HfH with effect from 1 June 2022;
 - ii. resignation of the HfH Board of Directors at 00.01am on 1 June 2022;
 - iii. transfer of HfH staff to the Council at about 00.01am on 1 June 2022.
- 3.2 Accordingly, in order for HfH to operate as envisaged from 1 June 2022, there is a need for the Council to approve the changes set out in this report. The proposal is consistent with the decision made by Cabinet at its meeting on 7 December 2021, along with the additional legacy issues set out in paragraphs 1.3, 5.2 and 5.3 of this report. This re-structure of HfH reflects its change in purpose from an ALMO (managing the Council's housing stock) to a company holding private sector leases to provide accommodation to homeless applicants (and such other housing services as the Council may determine).

4. Alternative options considered

4.1 The Council could choose to close Homes for Haringey and take over the leases it already holds

This option was rejected as this would forgo the forecasted future savings. This option would also require renegotiation with landlords to convert the existing HfH leases to Council ownership and to re-sign tenancy agreements with existing tenants.

4.2 The Council could choose to allow Homes for Haringey to continue until the current leases end but with new leases taken up by the Council

This option was rejected as although it would allow some limited savings to be maintained until the leases naturally expired, it would still lead to those savings to be lost after that date. This option would also forego future savings.

4.3 The Council could choose to allow Homes for Haringey to continue until the current leases end but with new leases taken up by a third party

This option was rejected at this time as there is not currently a viable alternative provider. However, further negotiations may lead to alternative providers in the future as Capital Letters and the Haringey Community Benefit Society evolve.

5. Background information

5.1 On 20 May 2022, the Director of Housing, Regeneration & Planning approved a proposal that “*Homes for Haringey continue as a wholly-owned company with the purpose of holding Private Sector Leases and being the direct landlord of tenants within those properties*”, which is consistent with the decision made by Cabinet on 7 December 2021.

5.2 There are some legacy issues that it will not be possible to fully resolve prior to 1 June 2022: in particular, where contractors have not yet agreed to the transfer of their contracts from HfH to the Council, there will be an ongoing need to novate, assign and/ or terminate some of the contracts that were entered into by HfH. While that work is ongoing, from 1 June 2022, HfH will remain in contract with those suppliers and will, therefore, continue to pay suppliers for pertinent goods, works or services provided by them. The Council will provide accounting / billing support to HfH and HfH will invoice the Council for all costs that it has incurred under those contracts.

5.3 In order to ensure that from 1 June 2022, HfH will have sufficient flexibility and scope to deal with such legacy issues as well as future requirements that the Council may have in relation to the provision of housing services, it is proposed that the objects of HfH be:

- a. to provide private sector leases to the Council for the provision of short term tenancies;

- b. to provide housing services to the Council;
 - c. such other matters as notified by the Council in writing.
- 5.4 The approved change in the remit of HfH entails that a number of other changes are made so that HfH may continue to operate from 1 June 2022 for the purposes noted above. Those changes include the adoption of a new Member's Agreement, Articles of Association and a new Management Agreement as well as the appointment of new Directors.
- 5.5 HfH is a company limited by guarantee and the Council is the owner and sole Member of HfH. As such, it is a matter for the Council as owner of HfH to approve a Special Resolution and the adoption of a new Member's Agreement, Articles of Association as well as the appointment of new Directors.
- 5.6 A limited new Management Agreement is being prepared with a view to its being approved by the Director of Housing, Regeneration & Planning as a non-key decision. In summary, under the Management Agreement, the Council will provide all services required by HfH to enable it to manage the private sector leases which it holds, as well as preparing all operational requirements including preparing the business plan and budget for the company annually.
- 5.7 Given the limited remit of HfH after 1 June 2022, it is proposed that three Council officers be appointed as Directors of HfH with effect from 00.01am on 1 June 2022. Those officers are: Robbie Erbmman, Josephine Lyseight and Judith Page.
- 5.8 The proposed new Articles of Association, Member's Agreement and Special Resolution have been drafted by our external lawyers, Bevan Brittan. In addition, Bevan Brittan have provided reports on the Articles of Association and Member's Agreement setting out the key provisions of both documents, a copy of those documents are appended to this report at Appendices A, B, C, and D.
- 5.9 In summary, the Member's Agreement sets out the terms upon which the Council will participate in HfH as its sole member and the terms upon which the Council will retain decisive influence over both the strategic objectives and the significant decisions of HfH. Schedule 1 of the Member's Agreement specifies those matters where decisions are reserved for the Council as owner of HfH.
- 5.10 In summary, the Articles of Association contain the rules governing the manner in which HfH will be managed and operate and the objectives of HfH.
- 5.11 HfH is a company governed by public law and is therefore subject to the procurement regulations. Both the Member's Agreement and Articles of Association have been drafted to fall within the Teckal exemption. This means that the Council and HfH are able to make direct awards of contracts between them.
- 5.12 The continuation of HfH to manage PSL properties will reduce the net cost to the Council in providing such accommodation. If and when HfH is in a loss-making position, provided that any support provided is within the limits permitted under the Subsidy Control regime, the Council will need to provide grant funding or loans to enable it to remain solvent. The business case

assessment nevertheless is that HfH is a viable option as the Council would otherwise need to provide the housing directly to homeless applicants at a greater cost. The financial position will of course be kept under review.

5.13 Details of the decision taken by Cabinet on 7 December 2021

Cabinet Resolution

1. Note and consider the results of the consultation with tenants and leaseholders on the proposal to insource services from Homes for Haringey (see Appendix A), as well as the submission from the Board of Homes for Haringey (see Appendix B).
2. Approve the insourcing of services from Homes for Haringey, based on the rationales set out in the report, with the detailed implementation process delegated to Council officers, including service of a notice to terminate the Management Agreement, finalising the organisational structure for incoming staff and services, staff consultation and transfer under TUPE regulations, transferring budgets and financial processes, and resolving legal issues such as contract novation, ongoing management of leases, support to the Haringey Community Benefit Society, etc. as set out in section 6.7 of the report.
3. Approve co-design and co-production of new resident engagement arrangements, including involvement in policy, operational oversight and scrutiny, with detailed proposals to be brought back for final approval during 2022, as set out in section 6.6 of the report.
4. Approve a virement of £565,000 for the year 2021/22 and note an additional sum of £550,000 required next year, 2022/23, to meet the one-off expenditure needed to complete the transfer processes, as set out in paragraph 6.7.2 of the report.

Extract from paragraph 6.7 of the Report

6.7.1 If Cabinet approve the proposal to insource HfH, based on the rationales set out above and having considered the results of consultation, then a detailed implementation programme will be needed to effect a smooth transition, including servicing notice on HfH to terminate the Management Agreement, ensuring seamless business continuity for residents as well as reshaping service delivery to achieve the improvements needed and seize integration opportunities. Council officers, working collaboratively with HfH colleagues, have mapped out a set of implementation workstreams and a programme team is in place to manage the transition process. Broad areas of work include:

- overarching leadership and change management with a focus on welcoming, aligning and integrating HfH staff into the Council's organisational culture
- finalising the organisational structure for incoming HfH staff and services

- staff consultation and transfer under TUPE regulations
- where necessary, matching and selecting staff to new roles
- resolving any redundancy situations that may arise Page 9 of 13
- transferring budgets and financial processes
- formally dealing with legal issues through a termination agreement to end the existing management agreement between the Council and HfH
- contract novation where contracts held directly by HfH need to continue
- contract termination where contracts held by HfH are no longer needed
- arrangements for continuing with a residual HfH legal entity to fulfil ongoing management of property leases held directly by HfH and used to provide homeless accommodation
- continuation of management and maintenance services provided to the Haringey Community Benefit Society for homes used to provide move-on accommodation for homeless households
- ensuring communication with residents, Council and HfH staff, trade unions, contractors, partner organisations, and the wider community about the timing and practical details of the transfer

6. Contribution to strategic outcomes

- 6.1 This decision will support the strategic outcomes identified in the report to Cabinet on 7 December 2021.

7. Statutory Officers comments (Director of Finance (procurement), Head of Legal and Governance, Equalities)

Finance

The governance arrangements proposed in this report appears to have no direct financial implications on the Council.

There will be costs involved in setting up the company and progressing the PSL schemes and these will be covered by the budget for the PSL activities.

The full business case and capital expenditure required to progress schemes will be the subject of a future report to HfH board and Council for approval.

There are no fees or salary payable to directors. However, they can claim normal work-related expenses from HfH.

Procurement

The Head of Procurement has been consulted in the preparation of this report and confirms the recommendations in Section 2 above, fall outside of the Public Contract Regulations 2015. Therefore, there are no procurement related regulatory reasons preventing the Council from approving the recommendations stated in Section 2 of this report.

Head of Legal & Governance

The Head of Legal and Governance (Monitoring Officer) has been consulted in the preparation of the report.

HfH will carry on trading in accordance with the Cabinet decision 7 December 2021 after the Termination Agreement is entered into. As a result certain changes are required to be made to the Articles of Association and new Board of Directors must be appointed. In addition, a new Member's Agreement is needed.

The Council owns HfH and is its sole Member. The exercise of functions as owner of HfH is an Executive function. As such, the proposed decisions can be taken by the Leader. The rationale for those decisions and legal implications are set out in the body of the report.

The reason that decisions in relation to the appointment of Directors, adoption of a Member's Agreement and Articles of Association are to be taken by the Council in its capacity as owner of HfH, is that such matters are "reserved matters" under the current Articles of Association of HfH, which means that such decisions are required to be taken by the Council. Further, it should be noted that the proposed decisions are not unilateral decisions for the Council. Accordingly, on 1 June 2022, it is anticipated that the new Directors of HfH will accept their appointments and agree to adopt the proposed new Articles of Association and the Member's Agreement.

Equality

The paving decision made by Cabinet on 7 December 2021 was supported by a full Equalities Impact Assessment. As making the proposed changes to Homes for Haringey is consistent with the Cabinet's decision, it is considered that there are no additional implications with respect to the Council's public sector equality duty arising under section 149 Equality Act 2010. Accordingly, in approving this decision, it is considered that the Council will be acting in accordance with its duties.

8. Appendices

- A. Special Resolution
- B. Articles of Association
- C. Member's Agreement
- D. Report on Articles of Association and Member's Agreement

9. Local Government (Access to Information) Act 1985

Minutes of Cabinet meeting on 7 December 2021 approving that arrangements be made for “*continuing with a residual HfH legal entity to fulfil ongoing management of property leases held directly by HfH and used to provide homeless accommodation*” –

[Agenda item - Decision on the Council's proposal to bring Homes for Haringey in-house | Haringey Council](#)