

Report for: **Cabinet 17 July 2018**

Title: **Setting up a Community Benefit Society and a Purchase, Repair and Management Partnership to deliver Temporary Accommodation solutions**

Report
Authorised by: **Helen Fisher, Director of Housing, Regeneration & 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 In common with the vast majority of London boroughs, Haringey has experienced a significant increase in the number of households who are either homeless or at risk of becoming homeless. This has primarily been caused by increased demand, and increased rents, in the private rented sector (PRS), while the Local Housing Allowance (the maximum amount of Housing Benefit which can be claimed in the PRS) has been frozen. At the same time the Council has seen a significant reduction in the social rented homes available to let.

1.2 Where possible, the Council works with households to prevent homelessness. The Homelessness Strategy 2017-2022 places a strong emphasis on prevention, and on different agencies working together. Where prevention of homelessness is not possible, the Council has a statutory duty to provide Temporary Accommodation (TA) to eligible households until a more permanent offer of accommodation can be found.

1.3 A significant proportion of the TA used by the Council is sourced from the PRS. Much of this TA is not of the standard we would wish to place homeless households in, for key reasons:

- The housing is sometimes low-quality, both in terms of the home itself and the management, because the Council is limited to the stock held by private landlords, who work with the council.
- The residents have relatively limited security of tenure as private rented sector tenants.
- These rents are often expensive for the tenants, particularly those reliant on Housing Benefit.

1.4 This TA is also expensive for the Council, which has to fund the difference between the rent charged by the landlord and the amount the household can claim in housing benefit. For the most expensive form of TA (nightly paid), this

subsidy is around £4,500 per property per year. Given the high numbers in TA, this has led to a significant burden on the Council's general fund, with over £8m spent on TA in 2017/18. The Council has the third highest level of households in TA in the country, and is therefore accruing exceptionally high costs - so addressing this issue is particularly pressing for this Council.

1.5 For these reasons, the Council needs to look at ways it can provide better quality accommodation for homeless applicants, while reducing the numbers of people in TA and the costs of that TA. This report discusses two schemes which would increase the number of properties available to the Council to use as temporary accommodation, or to provide more affordable and better quality private rented housing into which homelessness duty can be discharged, that is:

- A Community Benefit Society (CBS)
- A Purchase, Repair and Management Joint Venture Partnership (PR&M)

1.6 The two schemes will have different financing models and different corporate structures. They will allow the Council to use different funding sources to maximise the number of homes acquired. The two schemes are also at different stages of development; whilst this report proposes the setting up of a CBS, it only deals with the progress to date on the PR&M, and a further report will be brought back to a future Cabinet for any decision to set the PR&M up.

1.7 The CBS is a capital-based model for the Council. It will use General Fund borrowing and retained RTB receipts to acquire properties, which will then be leased to the CBS. As the acquisitions will be part-funded using RTB receipts this will ensure that RTB receipts are spent within the requisite time limit and are not returned to the Treasury in future but are instead always utilised to acquire housing for Haringey's residents.

1.8 The PR&M is a revenue-based model for the Council, with no capital or assets transferring from the Council to the PR&M. In this model the PR&M partner raises the capital and acquires the properties, while the Council guarantees nominations to the properties. The Council will take ownership of the properties at the end of the partnership.

1.9 It is anticipated that the properties acquired through both schemes will be used in the first instance as TA. However, they could also be offered to homeless households as discharge of duty into private sector tenancies. Both of these will be at Local Housing Allowance level rents. The balance between the Council using properties for TA or for discharge of duty will be carefully considered based on the numbers of households living in temporary accommodation, the homes that have been acquired and the specific needs of homeless households. The balance could change as the number of homeless households changes, if local and regional housing costs fluctuate or if the Council decides to adopt different policy positions with regard to homelessness.

1.10 The proposals enable the Council to address many of the problems with temporary accommodation in that:

- The homes acquired will be better quality and better managed – either by a Registered Provider or Homes for Haringey.
- The residents will have more security of tenure.
- The costs of these homes to the resident and Council will be lower.

1.11 The proposals also have a long-term benefit to the Council as they will increase the Council's housing stock. Both the homes acquired by the Council and leased to the CBS and the homes owned by the PR&M will all ultimately be fully municipalised.

1.12 In parallel to the work on these two entities, the Council is proposing the establishment of a Wholly Owned Company (WOC), with the initial purpose of building new housing. The leases for the properties that will be leased by the CBS will include the stipulation that they can be transferred to the WOC at any time, should it be determined that this is a more appropriate means of holding and managing these properties.

2 Cabinet Member Introduction

2.1 Our Manifesto was clear that we would act decisively to reduce homelessness and the too often poor quality and precarious temporary accommodation in which we have nearly 3,000 households. As it argued: "Poor housing has knock-on effects everywhere; from education to health to crime. And the regular churn of families and children moving from one temporary tenancy to another makes it difficult to build strong local communities." We promised that "Labour will do housing differently". The decisions to establish a Wholly Owned Company to deliver new Council housing and not to pursue the HDV will play a key role in this and the proposals in this paper should be read alongside these. Both have the sole aim of improving the housing offer to those presenting as homeless to the council, who at present often end up in private rented accommodation which is expensive, insecure and often not of the quality we would like.

2.2 The decision to set up a Community Benefit Society (CBS) is in many ways a safety mechanism. It may prove possible to deliver its aims through the Wholly Owned Company, which would be our preference, and in which case the CBS may not ultimately be needed. But as it currently stands, because of restrictive government rules, the Wholly Owned Company cannot use Right to Buy receipts in the way that the CBS can. These receipts would allow the CBS model to buy up existing market homes, to improve the quality of these homes and then to use them to house families that we would otherwise be housing in accommodation rented from private landlords.

2.3 The second proposal, the Purchase, Repair and Management partnership, is only coming here at this point so that members can note progress to date. This demonstrates that we are committed to ensuring full transparency and scrutiny of this kind of proposal before any decisions are made to go ahead. The aims it seeks to achieve are the same as the CBS, but unlike the CBS, it would not rely on the Council borrowing to fund it, and would not involve the transfer of any Council assets, land or capital into the partnership. Other options to achieve the

same aims will be fully investigated and reported on before any final decision is made later in the year. Only when we are confident that this partnership is in the best interests of the Council and residents will any decision be made to go ahead.

2.4 Both models, are being explored in order to ensure that homeless families can have a better home, a more secure home and a home with a lower rent. Meanwhile the Council will save substantial costs in its annual temporary accommodation budgets and, ultimately, municipalise these private homes into Council ownership.

3 Recommendations

It is RECOMMENDED that Cabinet:

3.1 Agree to set up a Community Benefit Society, as set out at paras 6.8 to 6.18.

3.2 Agree to the acquisition of the first 100 residential units for the purposes as set out in paras 6.8 to 6.18.

3.3 Approve the first funding tranche of capital of up to £25m in 2018/19 for the purchase of properties set out in recommendation 3.2 to be funded by £17.5m of borrowing and £7.5m of retained right to buy capital receipts as agreed by Council at its budget setting meeting of 26 February 2018.

3.4 Approve the first tranche of Right to Buy receipts of up to £7.5m in the financial years 2018/19 to fund the purchase of properties set out in recommendation 3.2.

3.5 Approve the establishment of a CBS “smoothing reserve” as described in paragraph 8.20 to smooth any increases in capital finance costs during the life of the CBS or successor body or bodies.

3.6 To delegate the following decisions:

3.6.1 Delegate responsibility to finalise the necessary legal arrangements for the setting up of the CBS and to recruit the three independent board members for the CBS to the Director for Housing, Regeneration and Planning, after consultation with the Director of Finance and the Deputy Leader and Cabinet Member for Housing and Estate Renewal.

3.6.2 Delegate the purchase up to 100 individual residential units to be acquired under recommendation 3.2 and to be leased to the CBS to the Director for Housing, Regeneration and Planning in conjunction with the Director of Finance up to a maximum amount of £25m in total.

3.6.3 Delegate the agreement on property covenants and loan agreements to the Head of Legal Services and Director of Finance, as appropriate.

3.7 Note the progress made on the establishment of a Purchase, Repair and Management Joint Venture, with the purposes as set out in paragraphs 6.19 to 6.30, with any final decision on its establishment to be taken at a future Cabinet meeting alongside consideration of other options to achieve the aims of this proposal.

3.8 Allocate up to £200,000 funding from the Government's Flexible Homelessness Support Grant for 2018/19 to fund initial set up costs of the CBS and PR&M.

4 Reasons for decision

4.1 Haringey has experienced a significant increase in the number of households who are either homeless or at risk of becoming homeless. Where possible, the Council works with households to prevent homelessness, as set out in the Homelessness Strategy 2017-2022, but where prevention is not possible, the Council has a statutory duty to provide TA to eligible households until a more permanent offer of accommodation can be found.

4.2 A significant proportion of the TA used by the Council is sourced from the PRS. This TA is unsuitable in terms of its low quality, insecurity and high rents. This TA is also expensive to the Council, with over £8m spent on TA in 2017/18.

4.3 This report describes two schemes, a CBS and a PR&M, which will increase the number of properties available to the Council to either use as temporary accommodation, or to provide more affordable and better quality private rented housing into which homelessness duty can be discharged.

4.4 A Community Benefit Society (CBS) which is a capital-based model, in which the Council will use its capital resources, including retained RTB receipts, to acquire residential properties. These properties will then be leased to the CBS.

4.5 A Purchase, Repair and Management (PR&M) Joint Venture Partnership, which is a revenue-based model, in which the PR&M partner acquires the residential properties, while the Council guarantee nominations to the properties. The Council will take ownership of the properties at the end of the partnership.

4.6 The properties acquired through both schemes will be used as TA and for the discharge of homelessness duty into private sector tenancies. The homes acquired will be better quality and better managed (either by a Registered Provider or Homes for Haringey) than existing stock used as TA, the residents will have greater security and the costs of these homes to the resident and Council will be lower. In addition, the homes acquired by the Council and leased to the CBS and the homes owned by the PR&M will all ultimately be fully municipalised.

5 Alternative options considered

5.1 The Council is already taking action to address the high cost of temporary accommodation, for example by strategically evaluating demand to ensure the best use of resources. However, no serious dent can be made in the TA spend

without addressing the cause of this cost: the high rents that are charged on TA leased from private sector landlords. Additionally, issues of poor quality will be best addressed by having close control of the homes used for temporary accommodation.

5.2 There are alternative options for acquiring properties to use for TA and discharge of homelessness duty. The Council commissioned an options appraisal, which considered a range of options, summarised below, against the key requirements of being able to use RTB receipts to support any capital costs and being able to charge Local Housing Allowance (LHA) level rents.

5.3 The Housing Revenue Account option

This would entail purchasing properties and owning them within the HRA for use as TA. However, this option would not allow sufficient rent levels to be charged to make the property purchases viable or to make savings in the TA budget.

5.4 The General Fund option

This would entail purchasing properties and owning them within the General Fund for use as TA. This option would also not allow sufficient rent levels to be charged to make the property purchases viable.

5.5 The Arms-Length Management Organisation option

This would entail Homes for Haringey purchasing properties, then owning and letting them directly. Homes for Haringey is unable to use RTB receipts provided by the Council, and could not charge LHA rents on the properties.

5.6 A Limited Liability Partnership (LLP) option

This would entail setting up an LLP between the Council and a charity to purchase properties, with the Council holding a minority interest in the LLP. It is not clear whether it is possible to use RTB receipts in this model, given the level of control and concern about the efficacy of LLPs as a model for Council delivery. However, an LLP could be a viable model in the future, if the partner was the CBS once it is fully and properly constituted. However, council control of such a body would be diluted further than with a CBS.

6 Background information

6.1 Haringey, like most of London, has a growing crisis of housing unaffordability and a declining supply of social rented homes to let. This has inevitably led to an increase in households presenting as homeless. The Council has a statutory duty to provide suitable accommodation to those to whom the Council has a homelessness duty.

6.2 Following the 2011 Localism Act, councils can discharge their homelessness duty by placing households accepted as homeless post-November 2012 in a suitable PRS tenancy. This has become increasingly challenging in Haringey due to the rising costs of the sector. In the absence of sufficient social housing to meet the housing needs of households in TA, securing good quality and affordable PRS accommodation is essential, to ensure that the discharge of the Council's housing duty enables households to live in homes that are suitable for their needs.

6.3 Haringey currently has nearly 3,000 households living in TA, which is predominantly at the lower end – in terms of quality and price – of the PRS. This costs the Council approximately £8m per annum.

6.4 The Council has developed a plan for reducing the use and cost of Temporary Accommodation, by helping those currently in TA to find more settled and less expensive housing options, and by reducing new households' need for such accommodation through prevention and early intervention. Over the financial years 2017/18 to 2020/21, the plan aims to reduce the net financial impact on the Council's General Fund of Temporary Accommodation from over £8m per annum to around £4.5m per annum.

6.5 However, attempts to date to meet these aims have been hampered by the restrictions on the use of RTB receipts as well as limits on rent levels (capped at social rent levels) that can be charged by the Council for homes it acquires to meet these needs. These have resulted in making property acquisition and development unviable.

6.6 Two routes have been identified that allow the Council to deliver good quality housing for those presenting as homeless without being hampered by these restrictions. These two options would run concurrently.

6.7 They will:

- deliver good quality housing options for those presenting as homeless
- make use of retained RTB receipts
- make significant short and long-term savings in the Temporary Accommodation budget

The Community Benefit Society (CBS)

- 6.8A Community Benefit Society (CBS) is an entity registered under the Co-operative and Community Benefit Societies Act 2014 and would previously have been known as an Industrial and Provident Society. A number of other London boroughs have already set up a CBS, including Greenwich, Kingston, Tower Hamlets, Waltham Forest and Westminster.
- 6.9A CBS can own assets, trade and make a surplus; but any surplus funds are required to be reinvested in the CBS's activities. No economic benefit attaches to the 5 nominal shares in the CBS. There are no dividends, and no individuals can draw a profit.
- 6.10 Setting up a CBS will allow the Council to intervene in the housing market, via the CBS, to ensure a regular supply of high quality, well-managed, sub-market homes. The CBS will allow the Council to spend its RTB receipts efficiently and promptly, by establishing a clear acquisitions programme, and ensure that rents are capped at LHA levels. It will also ensure that the homes purchased are used exclusively for the benefit of Haringey residents.
- 6.11 The CBS will not be a wholly owned company of the Council, which would rule out the use of RTB receipts. The Council cannot have direct control of a CBS; the Council must remain a minority shareholder. The CBS will therefore be a separate entity from the Council. The proposed structure of the CBS board will consist of two Council direct appointees and three independent members, initially appointed by the Council. This means that the Council will directly appoint 40% of the board members, having two nominal shares out of five. The board members are responsible for the appointment of any future new board members. This allows the Council's initial appointees to identify who replaces them, affording an additional level of ongoing influence to the Council.
- 6.12 The CBS will be established with broad charitable objectives, based on the model charitable objectives for charitable housing associations which read:
- “To carry on, for the benefit of the community, the business of providing and managing housing, and providing assistance to help house people and associated facilities, services and amenities for poor people or for the relief of elderly, disabled (whether physically, mentally or learning disabled) or chronically sick people.”*
- 6.13 The CBS will be restricted to undertaking sub-market housing and closely associated activities. These will be solely for the benefit of Haringey residents. A deed of covenant will require that the rules of the CBS cannot be changed without the Council's consent. It will also require the CBS to act solely for the benefit of the borough's residents and limit the CBS's ability to enter partnerships and mergers or become a registered provider of social housing. The Council can have no direct control mechanisms over decision-making by the CBS, but will impose additional controls through covenants and conditions on any land, grant

or loan facilities. These will be subject to further legal and financial officer agreement as set out in the recommendation in paragraph 3.5.

- 6.14 The model proposed is that the Council use RTB receipts and already identified housing capital funding to purchase properties and undertake the works to bring them up to the appropriate standard. The homes will then be leased to the CBS. These properties will revert to the Council at the expiration of the 10 year leases, unless the Council at that point decides to renew the leases. This gives the Council flexibility to respond to different requirements or changes in the wider economic or statutory landscape.
- 6.15 Use of RTB receipts by a CBS, directly or indirectly, is allowed within the retention agreement the Council has signed with the Ministry of Housing, Communities and Local Government (MHCLG), provided the Council has a minority rather than a controlling interest in the CBS. If the Council were to give RTB receipts directly to the CBS, it would set out the terms for their use in a grant agreement with the CBS. As the Council is instead intending to give the RTB receipts to the CBS indirectly, by utilising the RTB receipts to purchase properties that are then leased to the CBS, these terms will be set out in the leases. This will afford the Council very strong influence over what is acquired by the CBS and ensure compliance with its own agreement with MHCLG on the use of RTB receipts.
- 6.16 Tenants of the CBS will be on assured or assured shorthold tenancies under the Housing Act 1988. This means that the CBS homes could be used to discharge the Council's homeless duty by way of a PRS Offer under Section 193 of the Housing Act 1996, as amended by Section 148 of the Localism Act 2011.
- 6.17 The setting up of the CBS will allow the Council to gradually acquire a property portfolio using General Fund capital, RTB receipts and LHA rents. The Council will aim to purchase 100 units in the first year. Ten year leases on these units will be granted to the CBS, which will enter into a management agreement with Homes for Haringey. At the end of the ten year lease period, these properties could revert to the Council. The leases will also include the stipulation that they can be transferred to the Wholly Owned Company at any time, should it be determined that this is a more appropriate means of holding and managing these properties.
- 6.18 The aim is to expand the programme in the first instance up to 400 units, if the first tranche of 100 units is delivered successfully, and a further report will be brought back to Cabinet for authority to acquire the additional 300 properties. The use of RTB receipts will allow for as many as possible of these properties to be purchased in, or in close proximity to, the borough.

The Purchase, Repair and Management Partnership

- 6.19 The second proposal is a Purchase, Repair and Management Joint Venture partnership (PR&M), which the Council is exploring, alongside other potential options to deliver the same aims, including those being pursued by other boroughs. In the PR&M proposal, the Council will seek a partner to purchase,

repair and manage properties, with an initial portfolio of up to 400 properties proposed. Identical PR&M Joint Venture partnerships to that discussed here have been set up by the London Boroughs of Waltham Forest and Bromley.

6.20 The properties to be purchased by the PR&M would be likely to be very similar to those being purchased by the CBS, that is existing market homes, primarily at the lower end of the PRS market, often former Right to Buys. The PR&M Partner would fund and undertake both the purchases and the bringing of these homes up to an agreed decent standard, so they can be let as affordable housing. The Council would have 100% nomination rights to these homes. At the end of the nominations agreement, which may be up to 40 years, the homes would transfer from the partnership to the Council.

6.21 The Council would not be providing any capital or transferring any assets in to the PR&M Joint Venture. Instead, the Council would guarantee to ensure that a tenant is always nominated – in effect a voids guarantee.

6.22 The Purchase and Repair Partner would finance the property acquisition programme by raising a bond of circa £100m. This would be repaid via monies generated from the rental stream of the properties. The partner would also have to ensure that the properties are managed by either a Registered Provider or Homes for Haringey.

6.23 The Council would guarantee tenants for the properties over the period of the bond, which is up to 40 years, but which would be set out in the contract. Any property voids above 2% would be payable by the Council. All other risks, such as rent arrears and repairs costs, would be borne by the partner. Over the period of the nominations agreement, the Council could vary who is nominated to these units as it deems necessary, to minimise voids and reduce any financial risk to the Council. At the end of the agreement, the ownership of the properties would be transferred from the Partnership to the Council.

6.24 The Council's nominations agreement with the partner would ensure that:

- The properties purchased meet the Council's needs for TA
- All purchase, refurbishment, management and maintenance costs are kept within an agreed cost envelope
- Any potential debt is minimised on the properties that will be owned by the Council at the point when the Partnership expires.

6.25 A corporate structure for the Partnership/Joint Venture is envisaged, in which the Council would have a 50% share with the PR&M partner in all decisions that are not specifically identified within the Partnership Agreement to be entered into by one or other party alone. The Council would appoint two officers out of four to form the PR&M Joint Venture Company.

6.26 The Council, via the contract, would have oversight and approval of all properties purchased, the quality of refurbishment works and the ongoing management of the properties. The Partnership would have options during the

40-year guarantee period to sell some properties, where both parties agree, to ensure debt repayments are fully covered or paid off earlier.

6.27 An indicative list of the legal documents necessary to put this structure into place (based on the models used in existing PR&M joint ventures) includes:

- Constitutional documents for the corporate structure (e.g. Shareholders Agreement and articles of association): This would be executed by the Council to confirm its 50% stake in the vehicle, its ability to place directors (or equivalent) on the Board and its participation and control over decision-making;
- Nominations Agreement: this would be executed by the Council and will underpin the rental receipts from the properties, which would repay the bond finance payments due over the 40-year term;
- Acquisition Agreement : Pursuant to this, the Partnership would appoint the Purchase and Repair Partner to acquire the relevant number of properties for letting;
- Asset Management and Maintenance Agreement: Pursuant to this, the Partnership would appoint the Partner to repair and maintain the properties acquired over the term of the contract;
- Nomination Agreement: This agreement between the vehicle and the Council would grant the Council the primary right to place tenants into the properties acquired;
- Note Purchase Agreements: These would be entered into by the corporate vehicle to acquire the relevant notes to support the bond finance;
- Leases of the properties: These would need to be put in place to avoid any VAT leakage in the structure.

6.28 Following advice on best practice in procurement, officers undertook a procurement process to test the market for potential partners. On 22 December 2017, the Council formally published its advertisement of its single-stage process to select a joint venture partner on Contracts Finder. This process was conducted in accordance with the European Commission's guidance on selection of private sector joint venture partners by the public sector.

6.29 The Council's Information and Participant Response Document detailed the opportunity for interested bidders and clarified the Council's evaluation criteria (being the selection of the candidate that scores the highest in response to the Council's pre-disclosed questions). The closing date for the selection process was 22 January 2018.

6.30 Further work will be undertaken on this proposal over the coming months. This will include an assessment of other potential options that could deliver the aims of this proposal, including those being pursued by other boroughs. A recommendation on a preferred partner for the PR&M will be made to Cabinet later this year, at which point Cabinet can decide whether or not to proceed with the establishment of a PR&M.

7 Contribution to strategic outcomes

- 7.1 This initiative supports the objectives of Priority 5 in the Corporate Plan – Creating homes where people choose to live and are able to thrive. In particular, the Corporate Plan notes that “We will provide realistic and achievable options for people to find housing or alternative housing.”
- 7.2 The Corporate Plan Priority 5 includes the objective “Prevent homelessness and support residents to live fulfilling lives” and identifies success in this objective in part as being helping households who are homeless or threatened with homelessness into settled homes, whether in the social rent or PRS. This aim is reflected in the Housing Strategy.
- 7.3 The Homelessness Strategy Delivery Plan identifies the proposals to set up the CBS and PRM as key ways to deliver Objective 2 of Haringey’s Housing Strategy 2017-2022 – Improve support and help to prevent homelessness. In particular, the Homelessness Strategy identifies the need to improve the quality of Temporary Accommodation and of private rented homes into which duty is discharged, which is the primary purpose of this proposal.

8 Statutory officer comments

Finance

- 8.1 The substantive recommendation of this report is to establish the CBS for the more effective delivery of temporary accommodation and the efficient utilisation of the Council’s retained right to buy capital receipts.
- 8.2 The ambition is for the Council to acquire 400 properties for use as high quality TA and then lease them to the CBS. The total acquisition cost of 400 properties will be capitalised and funded through a mixture of Council borrowing and the utilisation of retained right to buy receipts. The use of capital receipts to reduce the amount of borrowing required enables the capital finance cost to be met from letting the properties at 90% of LHA rent levels, which is the maximum allowable rate for TA. Full LHA rent levels will be charged where the properties are used for discharge of homelessness duty.

Council General Fund

- 8.3 The Council has been purchasing properties for use as TA with a view to them being transferred into the CBS. For 2018/19, expenditure of £846k has been incurred in the acquisition of three units. The acquisitions have used £254k of RTB receipts.
- 8.4 The report proposes that the costs of the establishment of the CBS are funded from the FHSG. The current position on the FHSG is an uncommitted balance of £9.271m which means there are sufficient funds available for this purpose.

8.5 Within the model that has been used to prove the viability of the CBS, there is an assumption that units of accommodation would be acquired at an average of £360k. If 400 units were acquired, the overall modelled cost would be £144m. Council borrowing of £101m and the utilisation of £43m of retained RTB capital receipts would fund this.

8.6 Undertaking borrowing results in the Council incurring interest charges on the debt. The interest rate used is 3% and is reflective of long-term interest rates that the Council can borrow money. The Council also has to make a statutory provision from its revenue account of sufficient resources to repay the debt over the life of the asset, known as the minimum revenue provision (MRP). For this type of asset, the useful life has been set at 50 years. Whilst the report discusses the issue of the leases possibly terminating around 10 years after inception, the financial effect on the Council has been modelled over 50 years, as this is the anticipated useful life of the asset and thus the annual MRP charge.

8.7 If the decision were taken to terminate the leases at any time or to change the tenant profile, then Members will be advised of the financial implications at the point of the proposed decision.

8.8 The investment of £144m includes an initial investment in the properties to bring them up to the Council's required standard, and includes all transaction fees to acquire the properties. The total charge to the Council's revenue account (interest and MRP) over the 50 year assumed asset life for a 400 unit solution is set out in the table below where year 1 is the financial year commencing 2019/20:

Costs over years							
Per Annum					Cumulative		
1	2	3	4	5	10	20	50
£000's	£000's	£000's	£000's	£000's	£000's	£000's	£000's
3,527	3,551	3,576	3,603	3,631	36,523	77,018	262,650

8.9 The report proposes that in the first tranche, up to 100 units will be acquired. Within the model, the unit cost of acquisition is £360k. Using this unit cost would mean that 69 units could be purchased with the £25m that the report is recommended to agree. Council borrowing of £17.5m and utilisation of retained RTB receipts of £7.5m (being the allowed 30% contribution to cost) will be used to finance this expenditure. Should the unit cost of acquisition be lower than modelled, then more units will be acquired within the £25m budget. This would improve the benefit to the Council through a further reduction in TA spend. Conversely, if the unit cost of acquisition is higher than modelled then less units can be acquired. As it is not possible to say at this stage the mix of units that will be acquired, for this report, the modelled assumption for the unit cost of acquisition has been used.

8.10 The overall cost is consistent with the approved capital programme agreed by Council at its budget-setting meeting of 26 February 2018 and the capital financing assumptions underpinning the budget. The total charge to the Council's revenue account over the 50 year assumed asset life for a 69 unit solution are set out in the table below where year 1 is the financial year commencing 2019/20:

Per Annum					Cumulative		
1	2	3	4	5	10	20	50
£000's	£000's	£000's	£000's	£000's	£000's	£000's	£000's
608	612	617	621	626	6,300	13,286	45,307

Community Benefit Society

8.11 The service model for the CBS is that it will enter into a lease arrangement with the Council for the assets purchased by the Council for TA and that lease will transfer the risks and rewards of ownership from the Council to the CBS.

8.12 The CBS will charge tenants a rent equal to 90% of the LHA rate. The CBS will be responsible for the maintenance of the units, rent and service charge collection and other property management matters.

8.13 The financial model for the CBS acquiring 400 units strongly indicates that the CBS is a viable entity under the assumptions used. The model allowed for the cost of the lease payments to the Council, maintenance, voids, bad debts and the running costs of the company itself.

8.14 The model then indexed the costs and income to estimate the financial position of the CBS over a period of fifty years. The indexation assumption used for rental increases (2%) is less than the indexation used for costs (3%), which is a prudent assumption. This model showed that under these assumptions that there is sufficient operating income in the CBS to meet its obligations (lease rentals, maintenance etc.) over the asset life.

8.15 A significant assumption in the model is the indexation of the rental stream at 2% per annum. As the income assumed is LHA, this level of increase may not materialise given the continued central government austerity regime. In order to test the model the assumption regarding rental increases was changed to a 1% increase per annum. This indicated that under this revised assumption there is sufficient net operating income in the CBS to meet its obligations. The table below sets out the net operating income (before lease rentals) at the 2% and 1% indexation level where year 1 is the financial year commencing 2019/20:

Per Annum					Cumulative		
1	2	3	4	5	10	20	50
£000's	£000's	£000's	£000's	£000's	£000's	£000's	£000's
4,711	4,804	4,899	4,996	5,094	51,516	114,236	397,496

4,602 4,638 4,674 4,711 4,747 47,685 76,745 292,221

8.16 The proposal for the acquisition of 69 units gives rise to the net operating expenditure) pre lease rentals set out in the table below where year 1 is the financial year commencing 2019/20:

Net Operating Expenditure Pre Lease Rental Payments Over Years							
Per Annum					Cumulative		
1	2	3	4	5	10	20	50
£000's	£000's	£000's	£000's	£000's	£000's	£000's	£000's
813	829	845	862	879	8,887	19,706	68,568

8.17 The CBS will be required to make lease payments to the Council. The Council in negotiation with the CBS will set these. For the purposes of modelling, it has been assumed that the lease payments from the CBS to the Council will be set at a level higher than the cost to the Council of supplying the finance for the properties. This is to enable the establishment of a smoothing reserve to cover off the risks outlined below.

8.18 The table below brings together the anticipated costs to the Council of acquiring 69 properties and the estimated lease payments to the Council.

Cost/Income Comparison								
8.19 The								
e								
LBH Cost								
Lease								
Income								
Difference								
e								
Per Annum					Cumulative			
1	2	3	4	5	10	20	50	
£000's	£000's	£000's	£000's	£000's	£000's	£000's	£000's	
608	612	617	621	626	6,300	13,286	45,307	
813	829	845	862	879	8,887	19,706	68,568	
-204	-216	-228	-240	-252	-2,586	-6,420	-23,261	

lling shows that in the early years that the CBS will contribute c£0.2m excess income per annum. When a discount factor is applied to these future cash flows, the average annual saving is £211k per annum.

8.20 The CBS will not have significant resources at its disposal and would find it difficult to absorb any significant changes to its business plan such as the Council requiring higher rentals due to it suffering higher interest costs, LHA income levels not meeting expectations, higher levels of voids or other costs. In order to ensure that the Council is able to maintain a consistent financial relationship with the CBS, it is recommended that a CBS smoothing reserve is established for three years and for the first three years any excess lease income will be credited there. The reserve will be reviewed after three years.

8.21 For the avoidance of doubt, savings made from reduced TA usage will not be transferred to the reserve. The decision to create a CBS will, based on the assumptions used, save the Council's TA budget approximately £1.887m per annum with 400 hundred units in the CBS and approximately £0.326m per annum for the proposed 69 units in this tranche. The actual level of TA saving will depend on the number of beds in the units acquired.

8.22 The Council has a stock of retained 1-4-1 capital receipts, after allowing for expenditure to date of £254k, as follows:

To be spent by	£000's
Dec 2018	1,703
Mar 2020	3,887
Jun 2020	3,224
Sep 2020	1,515
Dec 2020	2,872
Mar 2021	1,877
Total	15,079

8.23 The RTB receipts are used to fund 30% of the acquisition cost of the properties to be leased to the CBS. This shows that with its existing stock of RTB capital receipts the Council has sufficient RTB capital receipts to meet the first tranche of acquisitions. It is expected that there will be more RTB disposals in future years that will generate additional funds. Should there be insufficient RTB receipts due to a slowdown in sales, the activities of the CBS can be adjusted to fit the new resource envelope. It is imperative that the receipts are actually spent by the deadline as otherwise the Council will have to return the receipts to central government.

8.24 Recommendation 3.7 is to note the progress made in relation to the development of the purchase and repair option. At this stage, the proposal is not advanced sufficiently to evaluate the financial effect on the Council. When the report comes back to Cabinet, it will contain full finance comments on the proposed solution.

Legal

8.25 The Council has the power under section 1 of the Localism Act 2011 to establish a Community Benefit Society (CBS) pursuant to the Co-operative and Community Benefit Societies Act 2014 ("2014 Act"). The CBS must be registered with the Financial Conduct Authority. It must be carrying on a business, industry or trade, have at least 3 members, provide rules that make provision for all of the matters required under Section 14 of the 2014 Act and use a name that complies with the criteria set out by the FCA.

8.26 Members should note the following: While registered the CBS will have perpetual succession. This means it will continue to exist even if its membership changes. The CBS can also act, sue and be sued in its own name. It can own property and land without the need for trustees. The personal liability of members is limited to the amount of their unpaid share capital, except where any personal guarantees have been given. The CBS's rules are binding on its members. The CBS can sue and may be sued and can enter into contracts as well as vary them and discharge them. Debts due to the CBS from members are recoverable through a court of law. The CBS has a lien on a member's shares for any debt due by the member and may set off any sum credited on the shares in or towards payment of the debt. The officers of the society may be liable for prosecution if they direct the society so that it and/or the officers commit one of the offences set out in the 2014 Act.

8.27 Once registered, the CBS must comply with all its requirements under the applicable legislation, including requirements to:

- keep proper books of account and maintain satisfactory systems of control of its books, cash holdings and all receipts and payments;
- submit an annual return every year, by the due date, accompanied by a set of accounts;
- give notice of any change of its registered office;
- apply to the FCA to amend any of its rules or to change its name, as no amendment is valid until it has been registered by us;
- be run strictly in accordance with its registered rules; and
- inform the FCA if it no longer wishes to be registered.

8.28 The Council has the power to fund the CBS - pursuant to section 24 of the Local Government Act 1988 – but must comply with the State Aid rules and also the 2014 Act in respect of any charges to protect any funding.

8.29 The Council has the power under section 120 of the Local Government Act 1972 to acquire properties for the purposes of any of its functions.

8.30 The Council has power under section 32 of the Housing Act 1985 to dispose (including the granting of leases) of properties held in the Housing Revenue Account subject to obtaining the prior consent of the Secretary of State (save for disposal by way of a short tenancy). Specific consent may not be required if the disposal falls within the General Consent 2013.

8.31 The Council has the power to transfer General Fund land to the CBS pursuant to section 123 of the Local Government Act 1972, and without the need to obtain the prior consent of the Secretary of State where best consideration is to be achieved. Where that is not the case, then such consent will be required (save for limited circumstances such as short term leases or disposal which falls under the General Disposal Consent 2003).

Procurement

- 8.32 Strategic Procurement notes the report contains two considerations:
- 8.33 Establishment of a CBS - There are no procurement implications in relation to establishing a CBS or any property acquisitions undertaken by the CBS.
- 8.34 JV partner – Strategic procurement has been consulted in the procurement of a JV partner. The procurement process is being fully managed by DWP (legal advisors) and administered through the Council’s e-procurement portal by Strategic Procurement. Strategic Procurement can confirm the opportunity was advertised as a single stage procurement on 22 December 2017, with a closing date of 22 January 2018.

Equalities

- 8.35 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.
- 8.36 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.
- 8.37 The decision is to establish a Community Benefit Society for the purposes of providing better quality accommodation for homeless applicants while reducing the numbers of people in temporary accommodation. Setting up a CBS will help to ensure a regular supply of high quality, well-managed, sub-market homes. The decision will therefore primarily affect individuals and households living in temporary accommodation and those who are most at risk of homelessness.
- 8.38 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, accessible at this link. As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.
- 8.39 A full Equalities Impact Assessment is attached at Appendix 1.

9 Use of appendices

Appendix 1: Equalities Impact Assessment