

# MUNICIPAL YEAR 2014/2015 REPORT NO. 184A

## MEETING TITLE AND DATE:

Council 26<sup>th</sup> February  
2014

## REPORT OF:

Director of Health,  
Housing and Adult Social  
Care and Director of  
Finance, Resources and  
Customer Services

Agenda – Part: 1

Item: 10

**Subject: Investment in Private Rented  
Sector**

**Wards: All**

**Key Decision No: KD 3782**

**Cabinet Member consulted: Cllr Oykenor,  
Cllr Stafford**

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## 1. EXECUTIVE SUMMARY

- 1.1 There are increasing pressures on housing supply for residents of the borough; in particular, pressure on temporary accommodation has increased significantly, after a period of declining numbers and relative stability. In March 2010 there were 2,450 households in temporary accommodation which steadily reduced to 1,956 in March 2012 but began to increase again to 2,143 in March 2013 and then 2,188 by the end of December 2013. In the most recent comparison with other boroughs in September 2013, Enfield was ranked 7<sup>th</sup> highest nationally for the number of households in temporary accommodation, most of which are housed in the Private Rented Sector. As demand is outstripping the supply, temporary accommodation prices in the borough have increased, particularly for Nightly Paid Accommodation, which is currently used for approximately 480 households.
- 1.2 The introduction of the benefit cap at £500 per week has resulted in further challenges, as some large families in temporary accommodation are unable to meet their financial commitments and are falling into debt. Consequently, there is an estimated budget pressure of £3.328 million with a risk this could rise to up to £7.8 million in 2014/15, unless management action is taken to increase the supply of more cost effective accommodation and reduce the demand for the service.
- 1.3 The challenges faced in Enfield are not dissimilar to the national picture, which has seen an increase in the number of statutory homeless households. The Department of Communities and Local Government therefore commissioned Social Finance to develop an institutional investment scheme to increase the supply of long term, well managed, private rented accommodation for homeless households at rents comparable to Local Housing Allowance levels. Enfield was selected as a partner authority and has worked with Social Finance in recent months to assess the viability of such a proposal and develop a robust financial model.

- 1.4 As a result of this work Cabinet has agreed to establish a local authority company to own and manage a portfolio of houses, to make available to those residents primarily with housing need or at risk of homelessness. Properties will be purchased on a case by case basis using funding from the Public Works Loan Board (PWLB) or via external finance depending on the most viable option at the time of purchase. Whilst the company will initially focus on the purchase of existing properties, consideration will also be given to using funding for new build developments if deemed financially viable.
- 1.5 The Council will be able to increase the supply of value for money housing and quality accommodation for Enfield residents and to discharge its statutory duties for homelessness. In turn this will help to alleviate the pressures on the temporary accommodation budget, which are estimated at £3.328 with a budget risk of up to £7.8 million in 2014/15 if management action is not taken. It is proposed that a phased approach is taken to the purchase of housing in order to manage risk and test the effectiveness of this model. Given the significant values involved, the Council has sought independent expert advice on the complex legal matters and financial viability, including scrutiny on the financial model and a number of sensitivities, and also expert opinion on the tax payable by the proposed company.
- 1.6 This proposal is part of an overall strategy to address and therefore mitigate the increase in temporary accommodation pressure by securing local properties for local people. The structure of the model and proposed finance stream is in accordance with the investment options set out in KD 3808.
- 1.7 Following on from this decision Council is now (as recommended by Cabinet) being asked to agree that the borrowing for the scheme (detailed in the Part 2 report) is added to the Capital Works Programme.

## **2. RECOMMENDATIONS**

Council is asked (as recommended by Cabinet) to:

- 2.1 Agree to add the borrowing for the Investment in Private Rented Sector scheme to the capital works programme (as detailed in the Part 2 report).

## **3. BACKGROUND**

- 3.1 Approval of the overall scheme (as detailed within the report) was agreed by Cabinet on 12 February 14, who approved the following recommendations:

- a) the principle of utilising appropriate investment to develop a portfolio of houses (through a wholly owned company), subject to properties meeting the agreed financial criteria.
  - b) to establish a company limited by shares, wholly owned by the Council (in line with the proposed structure set out in sections 3.16 - 3.20 of the Cabinet Part 1 report), to own and manage the properties.
  - c) to delegate to the Director of Finance, Resources and Customer Services, Director of Health, Housing and Adult Social Care, Cabinet Member for Finance and Property and the Cabinet Member for Housing authority via a Portfolio Decision to finalise the timing, profile of acquisitions and the detail of the funding arrangements for each phase of the portfolio development, based on the most viable finance stream available, type and level of housing need at that time, and the Council's best interests, including but not limited to:
    - Approval of the terms of the investment
    - The terms of any guarantee to be provided to support the provisions of the investment
    - The term of any loan agreement between the Council and the Company
    - Such others matters as are regarded as necessary to enable the provision of the investment and acquisition of the properties and their subsequent lettings and on-going management.
  - d) to note that the investment model proposed is consistent with the viable options identified in the Framework of Investment in KD 3808, as per paragraph 3.13.
  - e) to delegate to the Director of Finance, Resources and Customer Services, Director of Health, Housing and Adult Social Care, Cabinet Member for Finance and Property and the Cabinet Member for Housing approval via a Portfolio Decision to finalise the Terms of Reference and Company Memorandum and Articles of the local authority company proposed and other such matters necessary to (i) incorporate and register the company and (ii) facilitate the objectives identified in this report.
  - f) to note that all investment and treasury management decisions about future phases of the portfolio will be subject to the Council's existing arrangements for governance and specialist advice.
  - g) that an annual review be undertaken to review financial viability of the property portfolio.
- 3.2 As a result of these decisions Cabinet then agreed to recommend to Council that the borrowing for the scheme is added to the capital works programme (as detailed in the Part 2 report). These decisions were

based on the detail contained within this report and a review of the financial model.

### **Motivation for Proposal**

- 3.3 In recent years, the demand for quality housing that offers value for money for Enfield residents has continued to put pressure on supply. This is in part due to the relative buoyancy of the London jobs market and the relative attractiveness of property prices in some parts of the borough compared with elsewhere in London. Additionally, as a result of the Government's welfare reforms, people are preferring to move out of expensive parts of London towards areas where rents are more competitive, such as Enfield.
- 3.4 In particular, there are significant pressures on temporary accommodation, for which demand has increased significantly after a period of declining numbers and relative stability. In September 2013, Enfield was ranked 7<sup>th</sup> highest nationally for the number of households in temporary accommodation. At the end of December 2013 there were 2,188 households in temporary accommodation, most of which are housed in the Private Rented Sector. The introduction of the benefit cap at £500 per week has resulted in further challenges, as some large families in temporary accommodation are unable to meet their financial commitments and are falling into debt.
- 3.5 As demand is outstripping the supply, rents have increased, which has resulted in an increase in the number of families presenting as homeless. For example, in December 2010 approximately 10% of the reasons for homelessness in the borough were due to the loss of Private Rent tenancies. In June 2013, this had risen to approximately 70%. Temporary accommodation prices have also increased in the borough, as landlords move away from more cost effective Private Sector Leasing Schemes (PSL) towards the more financially lucrative Nightly Paid Accommodation (NPA), which is currently used for approximately 480 households.
- 3.6 The budget pressures were managed in 2013-2014 by allocating an additional £1.6 million to the temporary accommodation budget and utilising the Homelessness Earmarked Reserve to meet the increased costs of temporary accommodation and an increase in rents payable to landlords, to help compete with boroughs with greater financial resources, particularly those from central London. However, this is not sustainable going forward. Consequently, there is an estimated budget pressure of £3.328 million with a budget risk of up to £7.8 million in 2014/15 for temporary accommodation, unless management action is taken to increase the supply of more cost effective accommodation and reduce the demand for the service.
- 3.7 In addition to the financial pressures, the increased use of private rented sector properties and NPA limits the degree to which the

Council can manage the supply as it is not within its control. A placement that is not within the vicinity of Enfield is not always suitable for local residents with housing needs, who may need to remain within, or near to, the borough to continue their education, maintain close proximity to family members or for proximity to their place of work, so more cost effective accommodation in and around Enfield is essential.

- 3.8 The challenges faced in Enfield are not dissimilar to those nationally, where there has also been a sharp increase in market rents due to an increasingly limited supply. In 2011-12, 108,720 households in England applied to their local authority for homelessness assistance, representing a 22% rise since 2009/10.
- 3.9 The Department of Communities and Local Government (DCLG) therefore commissioned Social Finance to develop an institutional investment model, with the aim of substantially increasing the supply of long term, well managed, private rented accommodation for homeless households at rents similar to Local Housing Allowance levels. Social Finance undertook an initial feasibility study in 2012 which concluded that there was the potential to deliver the necessary yields to attract annuity fund investment at scale.
- 3.10 In light of the findings, the DCLG extended the scope of Social Finance to undertake more detailed work with a small number of local authorities to confirm the viability of the scheme; structure of the financial model and company structure; identification of a number of potential investors; and consideration of how best to mitigate the risks. Given the significant challenges faced in the borough, Enfield was selected as a partner authority to work with Social Finance, with a view to creating the key principles of a model that can be used nationally by other local authorities.

### **Proposal**

- 3.11 Detailed work has been undertaken to review the housing market in Enfield and to create a financial model that captures the income and expenditure required to develop and maintain a property portfolio. The framework of investment (KD 3808) has been reviewed in the selection of the most appropriate option for this project and it is proposed that the Council purchases properties on the open market, renovates them and transfers them to a local authority company to own and manage. If the Council is close to its 5% VAT exemption the company may purchase and renovate the properties directly. This model may be developed in future to build new homes depending on financial viability at the time.
- 3.12 It is proposed that the project is taken forward with the following guiding principles:

**Target Group** – properties will initially be purchased for people currently in temporary accommodation (2,199 people and continuing to rise), to allow the Council to discharge its statutory duties, and also those at risk of homelessness. There will be flexibility built into the agreements to ensure that the target group and rental payments can change if required, so that the Council is able to respond to changing demands in future years to ensure long term financial viability.

**Company Structure** – a local authority company for which the Council has 100% ownership. This has the advantage of allowing the Council to retain full control of the company and therefore the allocations, selection of properties and the rent. As the properties will be owned by the company, Right to Buy will not apply therefore safeguarding the asset and investment. This structure gives the Council full flexibility to set an appropriate rent for the target population which is comparable to Local Housing Allowance rates. Membership of the Board of the company will comprise Councillors from the majority party and Council officers. There will also be two non-executive appointments, to provide additional expertise, challenge and advice.

**Finance Stream** – fixed rate annuity is accessed. Payments to the investor will be fixed throughout the life of the annuity. At the end of the term of the annuity, the properties can be purchased for a nominal figure (£1) so the Council gains an asset. PWLB funding or external finance may be secured; a decision will be taken at the time the funding is required following an assessment of the merits of each.

There will also be an initial working capital requirement, so the Council will be required to provide a start-up loan to meet the initial shortfall to be recovered throughout the term of the nomination agreement. The funding will be guaranteed from the General Fund and therefore show on the Council's balance sheet, so the level of risk the Council is exposed to will need to be carefully considered and regularly assessed.

**Property Size** – the portfolio will be developed based on financial viability of individual properties and will initially comprise of two and three bed properties as this is where demand is greatest. The portfolio will initially contain more two bedroom properties, as there is a greater need and the benefit cap is more likely to place pressures on the ability to pay the rent on three bed properties and therefore increase the risk of arrears. This will be subject to market availability but will also be reviewed in the light of housing needs over the agreed period of acquisition.

**Property Criteria** – the purchase of individual properties will need to be financially viable for the company. It is proposed that the Council sets guiding principles for the company, to provide an unrestricted framework for the acquisition of properties to ensure flexibility and allow decisions to be made, considering the individual merits and limitations of particular properties. This will include guidance on room

sizes, geographical spread and number of bedrooms. This will be reviewed in liaison with the Community Housing team periodically. Properties will be purchased or developed in Enfield and surrounding area based on demand and suitability for tenants. The company will be responsible for the identification of properties, though the acquisition may be carried out by the Council to enable it to benefit from a VAT exemption on renovation costs, then later transferred to the company if this proves more financially advantageous. The key factor for consideration will be financial viability.

**Number of Properties** – a phased approach to the acquisition/development of properties is proposed, taking into account market availability, demand and financial viability. The number of properties within the portfolio would be carefully managed to ensure that there is not a perverse impact on the market and there is management capability to deliver the scheme.

**Term of loan** – finance will be secured following independent advice. The Council will build flexibility into the company structure to enable a change in target population and the ability to charge market rents or sell properties and purchase others in different parts of the borough or surrounding area, to mitigate against a change in requirements in future years.

**Rent** – the rent will initially be set at a % of market rent, comparable to Local Housing Allowance (LHA). The specific % will be determined by the company at the time of allocation based on LHA rates and market rent at that point. The definition will be a % of market rent rather than being linked to LHA to provide flexibility with rent in the future so the Council can control the rent increases. The financial model is currently based on the initial rent being comparable to LHA rates in Enfield. Market rent has been calculated across the Broad Rental Market Area, to ensure consistency with the LHA calculation.

**Property Management** – there are a number of options for the management of the properties, which includes Community Housing or a separate company. It is proposed that the local authority company will assess the most appropriate option for the portfolio once established. In the interim Community Housing will provide management assistance whilst options are reviewed and the portfolio develops.

### **Financial Model**

- 3.13 Prior to purchase, the financial viability of individual properties will be assessed in line with the financial model, along with suitability for the target population, whilst also considering the impact on the financial standing of the overall portfolio.

- 3.14 The financial model was produced by Social Finance and is based on a number of prudent assumptions regarding income and expenditure to limit the risk exposure to the Council. This includes prudent assumptions on void rates, rental income and bad debts and does not factor in any capital appreciation for consistency with other schemes. The model does not factor in temporary accommodation savings as these will not be realised by the company directly, but temporary accommodation savings have been factored in to the overall financial business case for the Council.
- 3.15 Social Finance created the financial model based on properties available in Enfield and the surrounding areas meeting the target yield. The asking price was augmented with key property information including location, property type, tenure, bedroom size and an estimated condition using available photos of the properties. The condition of the properties was then graded with a rating of either poor, medium, good or excellent, and a broad estimate of associated renovation costs allocated to each project. The model assumes that the company would selectively acquire the properties based on those that offer the highest yield post renovation costs and other associated fees, rather than purchasing every property that becomes available.
- 3.16 The financial model has been subject to further scrutiny by Baker Tilly and Price Waterhouse Coopers, to give the Council further assurance that this is robust and based on reasonable assumptions. The detail of the financial model was approved by Cabinet on 12<sup>th</sup> February 2014.
- 3.17 The proposal offers the opportunity for the Council to realise savings from the temporary accommodation budget for each family that is moved out of Nightly Paid Accommodation on an annual basis plus the acquisition of assets, either for continued use or for sale to release capital. The financial model will be extensively monitored during the initial implementation stage to review the assumptions made and will be subject to regular review and scrutiny thereafter.
- 3.18 A number of exit strategies have been considered should the need for homelessness housing change or if the model becomes financially unviable. These include a review of the rent for a different target population, if the number of residents with housing needs reduces, to enable the company to generate more income whilst retaining the assets should these be needed again in the future. The terms of the loan may need to be reviewed at that point and legal advice would be sought as required. Another option would be to change the target population to key workers. Alternatively, the company could sell the asset prior to the end of the 35 year lease term to release capital.
- 3.19 The development of a property portfolio through a local authority owned company will enable the Council to increase the quality and availability of private rented sector accommodation for homeless

households or those at risk of homelessness in the borough. A reduced reliance on costly Nightly Paid Accommodation will provide greater value for money from Council services.

- 3.20 The proposed model is in line with the Framework of Investment set out in KD 3808. This proposal is premised on a 100% Council owned company, so control over the allocations and portfolio is greatest whilst Right to Buy obligations are not applicable. As this is not a joint venture, a procurement process is not required, however, as the investment will be entirely from Council borrowing (either directly using PWLB or supported through a guarantee if external finance is chosen) there isn't the option of a risk-share, therefore the benefits of the investment will need to be closely monitored.

### **Company Structures**

- 3.21 It is proposed that the company is initially established with an off-the-shelf name from Companies House and a permanent name and brand will then be agreed by the Company Management Board.
- 3.22 It is recognised that the structure of the company may change and develop over time according to decisions made by the Company Management Board or by the Council, in line with the Scheme of Delegation. Initially it is proposed that the company is formed of Members, officers and two non-executive appointments. The Company Management Board will be guided by the company's Terms of Reference and Articles of Association. The Board positions will not be remunerated, with the exception of the non-executive director positions.
- 3.23 The Company Management Board will be responsible for the overall management of all aspects of the company. This will include making sure that the company upholds all legal requirements, such as submitting annual accounts and sending notifications of changes in personnel to Companies House. In addition the Company Management Board will oversee the management of the property portfolio, ensuring that properties are purchased in accordance with agreed criteria and regular reviews of the financial model are undertaken.
- 3.24 The company will have a Company Secretary whose duties would include maintaining the statutory registers including:
- Register of Members
  - Register of Directors and Secretary
  - Register of Director's Interests
  - Register of Charges
- 3.25 Initially it is proposed that the board membership be as follows:
- 3 x Cabinet Members - one of whom will be the Chair.

- Director Finance, Resources and Customer Services - who will also be Company Managing Director
- Assistant Director of Community Housing
- Assistant Director Corporate Governance – who will also be the Company Secretary
- 2 Non-Executive Directors (to be remunerated).

3.26 The sole member (or shareholder) of the company will be the Council. In order for the Council, as sole shareholder, to take decisions in its capacity as shareholder, it needs to have a person acting as its representative who can attend general meetings and/or make sole member resolutions. An example of when the Council as sole shareholder would need to take such decisions is whenever the company constitution needs to change. The Assistant Director Corporate Governance will be the Council shareholder's representative.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

4.1 The Council could decide not to take any management action. This is not considered a viable option as it would not address the significant budget pressures facing temporary accommodation.

4.2 A number of other initiatives are being considered in order to respond to the increasing demand for housing and the budget pressures this results in. This includes information and advice to those affected by the Government's welfare reforms. This project will complement current and planned interventions as, given the scale of the housing challenge facing the borough; any single proposal will not solve the problem. A combination of proposals implemented over time will help manage the pressure on temporary accommodation.

4.3 A number of finance streams and company structures have been considered as part of the development of this model, as outlined in the Framework of Investment models (KD 3808).

4.4 A financial model has been produced by Social Finance, giving consideration to a range of portfolio sizes, seeking to make an impact on the budget pressures without destabilising the local housing market. The model has been independently scrutinised by Baker Tilly and Price Waterhouse Coopers to provide the Council with greater assurance.

4.5 The company could charge market rent for the properties purchased, however, this would not currently be suitable for the target population of those in temporary accommodation as it would be above Local Housing Allowance, resulting in high voids and rent arrears and not achieve the aim of reducing budget pressures.

#### **5. REASONS FOR RECOMMENDATIONS**

- There is a shortage of cost effective, value for money temporary accommodation in the borough, so rents are increasing, placing significant budgetary pressure on the Council.
- The number of households requiring temporary accommodation or at risk of homelessness in Enfield is expected to increase over the coming years, due to an increase in population and changes to welfare reforms. Enfield already has 2,188 households in temporary accommodation, which was the 7<sup>th</sup> highest in London in September 2013. The Council therefore needs to identify cost effective housing stock to meet local needs.
- The proposed finance stream and company structure is in line with the options set out in the Framework of Investment Models (KD 3808).
- Independent expert advice has been sought on legal and financial matters, to provide the Council with additional assurance of the model's viability. This has included advice on State Aid, external scrutiny on the financial model and advice on tax payable by the company.
- The financial model captures income and expenditure across the life of the lease term and indicates that this project is financially viable, with opportunities to deliver better value for money services and reduce budget pressures on temporary accommodation.
- As circumstances may change in the future, a number of exit strategies have been considered. The proposed model factors in flexibility to change the target population and thus the rent payable in the future. Assets can be sold before the end of the 35 year term, for example, if housing needs change and demand for temporary accommodation reduces, to ensure continued financial viability.
- The development of a property portfolio of this nature is in line with Enfield's Housing Strategy (2012-2027) which outlines a commitment to make the best use of existing resources and attract inward investment in order to increase the supply of quality accommodation to enable the Council to fulfil its statutory duties.
- The proposed company structure of a local authority company enables the Council to retain control of the company and allocations and rent policies, whilst still securing external investment and ensuring the portfolio is exempt from Right to Buy obligations in order to safeguard the investment. The proposed membership of the companies includes a mix of Members, officers and non-executive appointments.
- A phased approach to the purchase of properties will be taken, to manage risk and prevent the development of a local authority

owned portfolio distorting the market. Regular reviews will be factored in, to ensure that the portfolio remains financially viable and meets the needs of its tenants.

## **6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

### **6.1 Financial Implications**

6.1.1 Properties will be purchased and owned by a separate local authority company which will act as owner of the properties. There will be an initial capital investment plus an initial start-up loan to cover working capital requirements. This funding will be used to purchase and renovate the houses.

6.1.2 The result of the financial analysis shows that the project is viable, with opportunities to reduce budget pressures on temporary accommodation if the savings are factored into the financial model.

6.1.3 The Council's Finance Team has worked closely with Social Finance to ensure that all income and expenditure relevant to the project is captured in the financial model.

6.1.4 It is anticipated that there will also be savings to the Council based on a reduction of families in Nightly Paid Accommodation; the most expensive form of temporary accommodation (TA).

### **6.2 Legal Implications**

#### **6.2.1 Homeless Duty**

In accordance with Section 8 of the Housing Act 1985, and Part 7 of the Housing Act 1996 (as reformed by the Localism Act 2011), the Council is required to consider housing conditions/needs within its area, including the needs of homeless households, to whom local authorities have a statutory duty to provide assistance. In addition, the Homelessness Act 2002 places a duty on local housing authorities to have a strategy for preventing homelessness in their district. This includes the power to meet this duty via joint working with private sector partners which can be achieved using a company set up by the Council.

#### **6.2.2 Local Authority Companies**

The establishment of the company will be in accordance with section 95 of the Local Government Act 2003 and Section 1 of the Localism Act 2011 (the general power of competence).

The company will be set up in accordance with the Companies Act 2006, including the appointment to the Board of the company. The Memorandum and Articles of Association and any other relevant document for the setting up of such a company will be in a form approved by the Assistant Director of Legal Services.

### **6.2.3 Procurement**

The wholly owned local authority company will provide the substantial part of its services to the Council therefore the Council can benefit from the Teckal Exemption, which enables the Council to procure the services of the local authority controlled company directly without the need for carrying out a procurement process. If the company is to have any private ownership/interest in the future, the Council will be required to carry out a procurement exercise in accordance with the Contract Procedure Rules and in particular the Public Contract Regulations 2006 (and amendments thereto) depending on the role of the private partner and the purposes of the joint venture.

### **6.2.4 Property**

Any properties purchased by the Council for subsequent disposal (or disposal of existing stock) to the local authority company must be carried out in accordance with the Council's Property Procedure Rules, ensuring compliance with the provisions of section 123 of the Local Government Act 1972 which requires disposals for consideration not less than the best that can reasonably be obtained, unless with the consent of the Secretary of State.

The properties will (subsequent to their disposal from the Council) be owned by the local authority company; that company is able to offer tenancies such as Assured Shorthold Tenancy Agreements or full Assured Tenancies which would not attract right to buy. A nomination/management agreement can be agreed between the Council and the local authority company; such will be in a form agreed by the Assistant Director of Legal Services.

### **6.2.5 State Aid**

The Council will either take out a PWLB loan or access external finance, therefore the Council has considered whether State Aid applies.

State Aid is aid granted by a Member State or through State resources (which could include loan finance to the company and other financial assistance from the Council) in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings and shall affect trade between Member States (Article 107(1) of the Treaty on the Functioning of the European Union).

In accordance with the Communication on the Revision of the Method for Setting the Reference and Discount Rates (“the Reference Rate Communication”) and Market Economy Investor/Lender Principles the Council can provide a loan if the interest rate charged is at or above the applicable reference rate. The reference rate is determined by using the 12 month LIBOR rate (as at the date of lending) and adding various percentage points based on the credit worthiness of the borrower and the collateral offered. Based on the information currently available, it is likely that the Council will lend above the reference rate. An interest rate above the reference rate will not in itself be sufficient to negate the presence of State Aid if any of the other terms of the loan (such as the repayment schedule, term or any guarantee) are such that no rational private sector investor/lender would agree to these. Therefore if the Council can comply with the above, the loan would not amount to State Aid.

Should the Council not be able to meet the above requirements the European Commission issued a Commission Decision in 2005 and updated it in 2012 (2012/C 8/02) (“the Decision”) which creates an exception to the State Aid rules. If State Aid is provided in connection with a Service of General Economic Interest (“SGEI”), it is compatible with the internal market and exempt from the notification requirements. The Decision refers specifically to undertakings providing “social housing for disadvantaged citizens or socially less advantaged groups” who (due to solvency constraints) cannot obtain housing at market conditions. The arrangements between the Council and the local authority owned company in relation to the provision of housing at below market cost, whether for rent or home ownership would be capable of being structured to comply with this exemption.

State Aid will be kept under review to ensure that the support from the Council is able to continue to be provided throughout the loan term in a way which is compatible with State Aid requirements.

#### **6.2.6 Guarantee**

In the event that the Council is required to give a guarantee in connection with the finance, a guarantee would not constitute State Aid if the local authority company) is not in financial difficulty, would in principle be able to obtain a loan on market conditions from the financial markets without any intervention by the State, the guarantee is linked to a specific financial transaction, is for a fixed maximum amount, does not cover more than 80% of the outstanding loan and is not open-ended, and the market price for the guarantee is paid.

Section 24(1) of the Local Government Act 1988 provides that, subject to section 25, a local housing authority shall have power to provide any person with financial assistance for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation,

improvement, maintenance or management (whether by that person or by another) of any property which is or is intended to be privately let as housing accommodation. The Secretary of State has issued a number of general consents under section 25 and general Consent C provides that a local authority may provide any person with any financial assistance (other than the disposal of an interest in land or property) for the purposes of or in connection with the matters set out in section 24(1). These powers in the Local Government Act 1988 would also apply to the provision of loan finance by the Council to the company referred to in the next paragraph.

#### **6.2.7 On Lending Money**

The Council has power to borrow in connection with its functions or for the prudent management of its finances under section 1 of the Local Government Act 2003. The Council has a duty under section 3 of the Local Government Act 2003 to determine and keep under review how much it can afford to borrow. The Council is also required to have regard to the Prudential Code for Capital Finance in Local Authorities when carrying out its duties under Part I of the Local Government Act 2003.

The Council will have both a charge over the properties and a loan agreement with the Company to protect the Council's interests.

#### **6.2.8 Investment Powers**

Section 12 of the Local Government Act 2003 (2003 Act) permits the Council to invest for any purpose relevant to its functions under any enactment or for the purposes of the prudent management of its financial affairs.

#### **6.2.9 Other Legal Matters**

The Council has power to acquire properties. Under s 74(3) of the Local Government and Housing Act 1989 and property acquired by the Council for the purposes of onward disposal to someone else shall not be accounted for in the Council's HRA.

In the event that the Council incurs VAT on the cost associated with the refurbishment of dwellings, it should be able to recover that VAT under s33 of the Value Added Tax Act 1994 (which the local authority company would not be able to do). The Council will be required to give consideration to the 5% VAT exemption.

### **6.3 Property Implications**

6.3.1 Properties are most likely to be purchased by private treaty, by finding suitable properties being marketed by local estate agents. Properties will be located in different parts of the borough, or in neighbouring

boroughs if suitable for the prospective tenants, to achieve diversification and to avoid inflating prices. Care will be needed to ensure that the company is not seen as a special purchaser, resulting in paying more than market value. This can be best achieved by appointing several agents to handle acquisitions to handle a small number each.

6.3.2 Properties may need expenditure to bring them up to habitable standard. Any such works should be identified prior to purchase and scheduled to be undertaken immediately on purchase and prior to occupation. Following this they should be regularly inspected to ensure they comply with all relevant legislation.

6.3.3 A strategy will need to be prepared for the portfolio of properties, to set out the objectives for the longer term.

## 7. KEY RISKS

- **There is insufficient housing stock available in the borough that offers the target gross yield, thus reducing the potential to secure the intended portfolio size.** This can be mitigated by considering larger properties that offer the potential to refurbish and sub divide into smaller units and also considering properties in neighbouring boroughs, if they can meet the housing needs of Enfield residents. Detailed market analysis has been undertaken in the development of this proposal.
- **Housing needs change and the demand for properties of this nature change.** This will be addressed by devising a flexible approach within the company so that the target population and thus the rental income can be altered over time, as well as the option to sell an asset if required.
- **The project does not break even over the life of the lease term due to rent arrears, voids and also depreciation in capital value.** A robust financial model has been produced that makes prudent assumptions on income and expenditure. This will be reviewed and updated over the life of the project to ensure the assumptions continue to be accurate. Exit strategies have been considered as outlined in 3.11.
- **Finance is secured but properties are not fit for purpose.** This will be mitigated by ensuring that all properties are refurbished to Decent Homes standard and costs of such have been factored into the financial model. This includes costs of any adaptations for those with mobility difficulties.
- **Reputational risk for the Council if the company is not financially sustainable.** This is mitigated as far as possible by a robust financial model that will be monitored closely throughout the life of the lease

term. A number of exit strategies have been considered as outlined in 3.11.

- **Properties are not appealing to households in temporary accommodation so the Council is unable to discharge its statutory duties as intended.** This will be mitigated by selecting properties in close liaison with the Community Housing team that can meet requirements of Enfield residents.
- **The Council receives a legal challenge due as the project is considered to be in breach of State Aid.** Expert legal opinion has been sought and concludes that provided the terms and interest rate offered on any loan by the Council to the company meet the Market Economy Lender Principles (set out in paragraph 6.2.5 above) that loan would not be State Aid or alternatively the arrangements between the Council and the company could be structured to meet one of the exemptions.
- **Purchasing a significant number of properties could destabilise the local housing market and result in an increase in property prices and reduce the number of properties on the market for first time buyers.** This will be mitigated by detailed market analysis of the trends and the purchase of properties in neighbouring boroughs, if suitable for individual needs. A phased approach to the acquisition will be taken, with the potential to use funding to build new houses to increase supply.

## **8. IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

This project will enable the Council to access finance to increase the supply of good quality, value for money housing in the borough, to meet the objectives set out in Enfield's Housing Strategy (2012-2027). By increasing the supply of quality accommodation within the Council's control, this will enable the Council to discharge its statutory duties or prevent homelessness and increase access to secure accommodation for some of the most vulnerable residents in the borough.

### **8.2 Growth and Sustainability**

Access to good quality, stable housing is a key aspect of a person's health and wellbeing. By using long term finance the Council will remove concerns over refinancing or the need to sell properties after a few years. Furthermore by ensuring properties are maintained to a good standard, the scheme will be able to increase the supply of quality accommodation and in turn

improve health and wellbeing and prospects of securing employment.

### **8.3 Strong Communities**

By increasing the supply of quality homes that the Council can access within the borough and the surrounding area, this will increase opportunities for local residents to access employment and training and thus reduce the likelihood of them requiring additional services from the Council.

## **9. EQUALITIES IMPACT IMPLICATIONS**

An overarching Equalities Impact Assessment has been completed. Allocations to individual properties will be made in line with existing Council policies, which have also been equality impact assessed.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

Through this project the Council has the opportunity to reduce the number of households in temporary accommodation and provide quality accommodation for some of the most vulnerable residents. This in turn, provides the opportunity for the Council to make a positive impact for wider objectives, such as reducing employment and improving health and wellbeing.

## **11. HEALTH AND SAFETY IMPLICATIONS**

All properties purchased will be renovated to Decent Homes' standards and subject to health and safety checks prior to habitation.

## **12. HR IMPLICATIONS**

The local authority company will appoint relevant personnel in accordance with HR processes and procedures. The terms of existing members of staff will not be affected as a result of this project.

## **13. PUBLIC HEALTH IMPLICATIONS**

By increasing the supply of good quality housing in the borough across tenures, health and wellbeing of individuals will be improved. All properties purchased will be fit for purpose or refurbished so that they fall in line with the Council's decent homes standard. Where investment is used to provide quality housing to enable the Council to discharge its statutory homelessness duties, residents selected for these properties will be most at need and therefore most affected by the Government's housing benefit cap.

Through the other support mechanisms in place around the Council (e.g. the Welfare Reform Task Force), people will be actively

encouraged and enabled to return to work, with all the positive outcomes associated with being economically active i.e. improved general well-being, self-esteem and longer term employability.

### **Background Papers**

None