

**MUNICIPAL YEAR 2015/2016 REPORT NO.**

**ACTION TO BE TAKEN UNDER  
DELEGATED AUTHORITY**

**PORTFOLIO DECISION OF:  
Cllr Ahmet Oykener, Cabinet  
Member for Housing & Housing  
Regeneration:**

Director – Regeneration  
and Environment &  
Assistant Director –  
Property Services

<b>Agenda – Part: 1</b>	<b>KD 4206</b>
<b>Subject: Housing Gateway Head lease</b>	
<b>Wards: All</b>	

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**1. EXECUTIVE SUMMARY**

- 1.1 There are a growing number of long term void properties on the Council's renewal estates which could be better used by leasing them to Housing Gateway to assist with meeting the need of temporary accommodation in the borough.
- 1.2 A lease structure has been drafted that enables the Council to grant a head lease to Housing Gateway, who will in turn sub-let the properties using Assured Shorthold Agreements to tenants who would otherwise be placed in expensive nightly paid temporary accommodation.
- 1.3 This report seeks authority for the Council to use this structure to grant head leases for individual vacant properties to Housing Gateway

**2. RECOMMENDATIONS**

- 2.1 That the Council grants individual head leases to Housing Gateway for vacant Council homes where those properties would otherwise remain vacant in order to avoid granting a secure tenancy that would limit future development.

### **3. BACKGROUND**

- 3.1 The Council is making good progress on its estate renewal schemes, working towards achieving vacant possession to facilitate redevelopment on the Alma Estate in Ponders End and New Avenue in Southgate. There are currently over two hundred and fifty vacant properties on these estates some of which may be empty for several years ahead of being required for demolition in accordance with the proposed consultation phasing plans.
- 3.2 There are opportunities to better utilise some of these housing assets which would otherwise have been vacant, by leasing out vacant units to Housing Gateway who will in turn sub-let the properties to tenants who would otherwise have been placed in expensive nightly paid accommodation. This will provide much needed temporary accommodation.
- 3.3 A lease structure has been drafted that enables the Council to lease out vacant properties to Housing Gateway who can then sub-let the properties using Assured Shorthold Tenancy agreements to private tenants. The lease structure mitigates as far as possible the creation of secure tenancies which from the Council's perspective is the greatest financial risk and also reduces the risk of being able to provide future vacant possession.  
Housing Gateway will be responsible for management, rent collection, maintenance internally, tenancy management and ensuring vacant possession at the end of the lease or when the Council requires the units back for demolition. Management of the renovation of the void properties is to be agreed.
- 3.4 The head lease includes a nominations clause which enables the Council to nominate 100% of the tenants. In the main this will be families who are already deemed as being homeless or threatened with homelessness and are in priority need. This may also include families who are the existing tenants of current non-resident leaseholders on estate renewal schemes who live in a current phase of the project, assuming they are in priority need and would otherwise be placed in temporary accommodation.

### **GRANTING OF LEASES**

- 3.5 The intention is to initially grant head leases to around 15 individual properties on Alma which are already available and then additional leases as and when future vacant properties become available where those properties are required for future development or disposal. All of the proposed initial 15 properties are in the later phases of the Alma project.

- 3.6 Recommendation is that we follow this lease process on all estate renewal schemes as properties that are not required in an early phase become void.

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

- 4.1 The Council could consider a number of options for the use of its vacant properties on renewal estates;

##### **4.1.1 "Do Nothing".**

Doing nothing would not present an opportunity for the Temporary Accommodation team to house tenants or bring much needed income to the HRA in terms of rent and additional recovery of communal maintenance and servicing costs. Nor would it reduce the HRA's own liability for Council tax from vacant properties on renewal estates.

These are significant financial incentives to proceeding with the proposed structure which are referred to in the financial implications in part 2.

##### **4.1.2 Let to Managing Agents**

The Council could market the opportunity to prospective landlords. This option has been considered and discounted. The Council has already attempted this approach and the Council is in contract with Tando for 17 properties. While this approach works it has proven to be very labour intensive, there is limited scope for adding additional properties into the contract without undertaking further procurements, and as a result lacks the flexibility that the Council requires to be able to sub-let homes as they become vacant. Under the proposed leasing arrangement with Housing Gateway the amount of upfront expenditure will only be limited by the requirement to meet a pre-determined financial return for Housing Gateway. This should enable many more homes to be brought back into use.

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

- 5.1 Reducing temporary accommodation costs and reducing council tax liability and increasing the collection of funds which are spent on communal services for the block by way of service charges are three of the significant economic incentives for the Council in leasing out its vacant properties to Housing Gateway for sub-letting.
- 5.2 There are social benefits of bringing these properties into use albeit for a temporary period of time.

- 5.3 It is recognised that the proposed leasing of these properties to Housing Gateway using the proposed lease structure will be at less than the full market rental value of the properties. The proposal to include a Council nomination right, at LHA rental levels will limit the rental value of the properties. The proposal to require the upfront payment of the capital cost of bringing the homes up to an acceptable standard for letting will also limit the market rental value of the properties. Taken together it is considered that both these factors that limit the rental value of the property justify the proposed lease of the properties to Housing Gateway.

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

### **Financial Implications**

- 6.1.2 The financial implications are included in Part 2 of this report because they contain commercially sensitive information.

### **Legal Implications**

- 6.2.1 The Council has power under section 1(1) of the Localism Act 2011 to do anything that individuals generally may do provided it is not prohibited by legislation and subject to public law principles. This power may be exercised for the benefit of the local authority, its area or for person's resident or present there. Accordingly, the Council is empowered to enter into the head lease pursuant to this general power of competence.
- 6.2.2 Section 111 of the Local Government Act 1972 further gives the Council the power to do anything ancillary to, incidental to or conducive to the discharge of any of its statutory functions. The recommendation and proposals in this report is in accordance with these powers
- 6.2.3 Provided the head lease is less than 7 years, it is a short lease and not governed by the duty to obtain "best consideration" pursuant to Section 123 of the Local Government Act 1972. The value of the project will not exceed £2m.
- 6.2.4 Pursuant to Part II Section 38 of the Housing Act 1985, the disposal' of housing land will not require Secretary of State consent as it is not a 'relevant disposal (being a lease of less than 21 years).
- 6.2.5 The Council's Property Procedure Rules permit property to be disposed of (including lettings) without it being marketed in instances where

disposal on the open market would not be in the best interests of the Council. Therefore, this needs to be complied with. These are short-life properties which have been identified for demolition and need to be kept under close control

- 6.2.6 There is potential risk associated with the proposed structure, (in respect of obtaining vacant possession or a claim by an occupier for security of tenure). To mitigate these risks, the head lease between the Council and Housing Gateway needs to include some safeguards, including:
- contracting out of security of tenure;
  - including a severability clause;
  - placing full responsibility on the provider to serve notice for possession on an under tenant and to take necessary steps to deliver vacant possession.
  - having a break clause to allow early termination to offset any claim for a secure tenancy and to afford flexibility to the Council's development objectives.
- 6.2.7 Section 76 of the Local Government and Housing Act 1989 requires local authorities who run a Housing Revenue Account (HRA) to prevent a debit balance on the HRA.
- 6.2.8 Councils owe a fiduciary duty to all their funders and it is essential to note that Councils' fiduciary duty requires them to provide services on 'ordinary business principles' unless there are sound social reasons for doing otherwise. The head lease will be in a form as approved by the Assistant Director Legal Services
- 6.2.9 Schedule 1 lists tenancies that are not secure ones and paras 4 and 3 can be relied upon in this respect, as set out below:

Pursuant to Part II Section 38 of the Housing Act 1985, the disposal of housing land will not require Secretary of State consent as it is not a 'relevant disposal (being a lease of less than 21 years).

- 6.2.10 Having considered the provisions of the Housing Act 1985, Schedule 1 lists tenancies that are not secure ones and paras 4 and 3 can be relied upon in this respect, as set out below:

Para 4 - Accommodation for homeless persons- (please note that amendments are noted as pending)

A tenancy granted in pursuance of any function under Part VII of the Housing Act 1996 (homelessness) is not a secure tenancy unless the local housing authority concerned have notified the tenant that the tenancy is to be regarded as a secure tenancy.

Para 3 - Land acquired for development

(1) A tenancy is not a secure tenancy if the dwelling-house is on land which has been acquired for development and the dwelling-house is used by the landlord, pending development of the land, as temporary housing accommodation.

(2) In this paragraph "development" has the meaning given by [section 55 of the Town and Country Planning Act 1990] 1 (general definition of development for purposes of that Act).

Please refer to Appendix 1 for Heads of Terms.

### **6.3 Property Implications**

6.3.1 The head lease documentation will need to clearly identify the extent of the demised premises to give efficacy to the lease.

6.3.2 Detailed Heads of Terms including inter-alia the length of the lease, expenditure arrangements concerning inventory costs, eviction and court proceedings, insurance(s), reinstatement and other costs of a periodic or re-occurring nature need to be agreed with the successful party prior to the lease being entered into. The Head lease should also be contracted out of the security and compensation provisions of the Landlord and Tenant Act 1954 Part 2

6.3.3 Careful consideration should be given to ensuring that secure tenancies are not created inadvertently and a clear strategy and mutually acceptable protocols adopted by both the Council and the Head leaseholder in the letting and management of these properties.

6.3.4 Management responsibilities within the lease and practical day to day management arrangements between the Housing Gateway and the Council need to be clearly identified, documented and approved.

6.3.5 Housing Gateway needs to provide the Council with appropriate and enforceable guarantees that vacant possession will be available when required.

## **7 KEY RISKS**

See Part 2 of the report

## **8 IMPACT ON COUNCIL PRIORITIES**

8.3.1 Fairness for All

8.3.2 The principle of bringing currently vacant properties into short term use promotes fairness given the conditions of the current housing rental

market. Leasing out vacant properties on renewal estates for sub-letting by a management & lettings company, for nominated temporary accommodation will save the tax payer money.

#### **8.4 Growth and Sustainability**

**8.4.1** Increasing the supply of temporary accommodation using our existing voids will help meet the borough's housing needs

#### **8.5 Strong Communities**

Increasing supply of temporary accommodation on our estates will encourage activity, interaction and community cohesion and will have a positive impact on the local communities.

### **9 EQUALITY IMPACT IMPLICATIONS**

**9.1** An Equalities Impact Assessment has been carried out for each of the relevant housing estate renewal projects.

### **10 PERFORMANCE MANAGEMENT IMPLICATIONS**

This report does not recommend a change of service or implementation of new practices and therefore Performance Management Implications are not applicable.

### **11. PUBLIC HEALTH IMPLICATIONS**

Housing is fundamental to the health of the public. Improving and increasing the supply of good quality temporary accommodation will have a positive effect across the borough

#### **Background Papers**

None





## MUNICIPAL YEAR 2015/2016 REPORT NO.

### PORTFOLIO DECISION OF:

- Director of Finance, Resources and Customer Services
- Director of Health, Housing and Adult Social Care
- Cabinet Member for Finance
- Cabinet Member for Housing and Estate Regeneration

<b>Agenda – Part: 1</b>	<b>Item:</b>
<b>Subject: Investment in Private Rented Sector – Loan Instalment 5</b>	
<b>Wards: All</b> <b>Key Decision No: 4230</b>	
<b>Cabinet Member consulted: Cllr Stafford and Cllr Oykener</b>	

### REPORT OF:

Director of Finance, Resources and Customer Services

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### 1. EXECUTIVE SUMMARY

- 1.1 In February 2014 Cabinet agreed to establish a wholly owned local authority company to acquire and manage properties that the Council can use to discharge its statutory duties. This was in response to the significant temporary accommodation budget pressures facing the Council, resulting from an increase in demand for housing and rising rental prices.
- 1.2 Cabinet, and later Council, agreed the financial model, which provided authority for the Council to borrow funding up to an agreed amount and lend this to the company in a number of instalments. The first instalment of the loan was agreed in February 2014 and authority for further instalments was delegated to the Director of Finance, Resources and Customer Services; Director of Health, Housing and Adult Social Care; Cabinet Member for Finance; and Cabinet Member for Housing and Estate Regeneration.
- 1.3 The company has been in operation since March 2014 and good progress has been made. The company has an established acquisition process in place and now requires the next instalment of the loan to continue the acquisition of properties in line with the agreed criteria.
- 1.4 This report seeks approval for the next instalment of the loan to the company – Housing Gateway Limited – in line with the delegated authority granted in KD3782 and in accordance with the terms of the Facility Letter.

## **2. RECOMMENDATIONS**

- 2.1 Note that Cabinet delegated authority to the Director of Finance, Resources and Customer Services; Director of Health, Housing and Adult Social Care; Cabinet Member for Finance; and Cabinet Member for Housing and Estate Regeneration, 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 (KD 3782).
- 2.2 Note that the terms of the Facility Letter were agreed by the Director of Finance, Resources and Customer Services; Director of Health, Housing and Adult Social Care; Cabinet Member for Finance; and Cabinet Member for Housing and Estate Regeneration in September 2014 and the Housing Gateway Board of Directors in April 2014.
- 2.3 Agree to access the next instalment of the loan and on-lend this to Housing Gateway Limited in accordance with the Facility Letter.
- 2.4 Note that the treasury management decisions regarding the Council's borrowing to enable the on-lending to Housing Gateway Limited will be subject to the Council's existing arrangements for governance and specialist advice.

## **3. BACKGROUND**

- 3.1 In February 2014 Cabinet agreed to establish a wholly owned 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 (KD 3782). Cabinet agreed that properties would 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.
- 3.2 Cabinet agreed to delegate to the Director of Finance, Resources and Customer Services; Director of Health, Housing and Adult Social Care; Cabinet Member for Finance; and Cabinet Member for Housing and Estate Regeneration, authority to finalise the timing, profile of acquisitions and detail of the funding arrangements. This included the terms of the loan agreement between the Council and the Company.
- 3.3 The local authority company - Housing Gateway Limited – has now been formed with an established acquisition process in place. As 130 acquisitions have been completed, the company requires the next

## **5. REASONS FOR RECOMMENDATIONS**

- Cabinet approved the business case, financial model and overall financial envelope in February 2014 as per KD 3782.
- Housing Gateway Limited was established in February 2014 and the company is now fully operational. The acquisition process is well established and the next phase of the loan is required to enable the acquisitions to continue.
- A Facility Letter has been agreed by the Council and Housing Gateway Limited which sets out the terms of the loan agreement and provides clear terms of repayment. This was drafted by Trowers and Hamlin acting on behalf of both the Council and Housing Gateway Limited.
- The Facility Letter enables Housing Gateway Limited to access the fifth instalment of the loan in a series of instalments, under Schedule 3 of the Facility Letter. This will enable the company to access funding to coincide with the speed of acquisitions and better manage its cash flow.
- A six month review has been undertaken by Social Finance which reviewed the assumptions in the original business case and progress to date. This concluded that the business case remains undiminished and measurable progress has been made in all areas of the company's operation.

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

### **6.1 Financial Implications**

- 6.1.1 The overall loan value was agreed by Cabinet in February 2014 (KD 3782) and authority was delegated to agree the instalments of the loans as they are required. Furthermore in February 2014, Council agreed to add the borrowing for the Investment in Private Rented Sector scheme to the capital works programme. The fifth instalment of the loan to the company falls within the budget envelope set by Cabinet.
- 6.1.2 The Council will earmark the loans raised on behalf of the Company. The Treasury Management team will minimise the cost of interest costs and with reference to future interest trends. Borrowing on behalf of the company will be undertaken in conjunction with the Council's overall borrowing strategy.
- 6.1.2 The Council will also provide a line of credit to the company to facilitate its working capital and cash flow. This will be charged at the prevailing bank rate.

instalment of the loan to enable the acquisition process to continue. This will mark the fifth instalment of the loan.

- 3.4 A Facility Letter was agreed in September 2014 by the Director of Finance, Resources and Customer Services; Director of Health, Housing and Adult Social Care; Cabinet Member for Finance; and Cabinet Member for Housing and Estate Regeneration acting for the Council, and by the Housing Gateway Board of Directors in April 2014. This was drafted by Trowers and Hamlin and provides the mechanism for a loan agreement between the Council and Housing Gateway Limited.
- 3.5 The Facility Letter sets out the terms of the loan agreement. This stipulates that the loan can only be used by Housing Gateway Limited to support the activities agreed by the shareholder. In line with the Cabinet decision, the remit of Housing Gateway Limited is to acquire and manage properties, for which the Council has full nomination rights and can use these properties to discharge its statutory duties. The loan can therefore only be used for this purpose, unless the shareholder agrees to additional activities at a later date.
- 3.6 The Facility Letter enables the loan to be given to Housing Gateway Limited in instalments to minimise unnecessary interest repayment costs before the company has properties and tenants in place. The Facility Letter therefore contains a schedule that can be completed for every separate instalment. The loan has now almost reached the limit set in the fourth Facility Letter, so the fifth instalment of the loan is required. The terms of the Facility Letter will remain unchanged but the Facility Letter will be re-issued to the agreed amount.
- 3.7 The fifth instalment of the loan will enable Housing Gateway to continue to acquire properties that can then be used by the Council to discharge its statutory homeless duties.

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

- 4.1 As outlined in KD 3782, a number of alternative options were considered in the development of the Investment in Private Rented Sector business case.
- 4.2 In the development of the Facility Letter a number of alternative options were also considered, including a loan with a single instalment or the absence of a formal agreement. These options were discounted, as a formal agreement safeguards the interests of both the Council and Housing Gateway and the ability to access the loan in instalments provides greater flexibility.

## 6.2 Legal Implications

6.2.1 The Council has power to establish and participate in Housing Gateway Limited in accordance with Section 1 of the Localism Act 2011 and section 95 of the Local Government Act 2003. In addition, section 111 of the Local Government Act 1972 permits a local authority to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or right) which is calculated to facilitate, or is conducive or incidental to the discharge of any of their functions. It also has the necessary powers to borrow funding pursuant to Section 1 of the Local Government Act 2003 and to provide a loan, grant funding and/or share capital to the SPV under Section 24 & 25 of the Local Government Act 1988.

6.2.2 The Facility letter is in a form approved by the Assistant Director of Legal Services.

## 6.3 Property Implications

None.

## 7. KEY RISKS

- **The interest rate of the loan the Council can access to then on-lend to Housing Gateway Limited is not at a constant rate so the Council has to subsidise the loan rate of this changes over the course of the loan period.** This has been addressed by providing the flexibility to set the interest rate for each instalment of the loan, as determined by Schedule 3 of the Facility Letter.
- **Housing needs change and Housing Gateway Limited is no longer required to manage a property portfolio for use by the Council.** This has been mitigated by providing the flexibility for early repayment of the loan, for example if Housing Gateway Limited needed to sale a property to release capital.
- **The business case assumptions are not realised and the company does not achieve the objectives set.** This has been mitigated by commissioning an external review of the company's operation and by the exit strategies set out in KD 3782 to approve the original business model.

## 8. IMPACT ON COUNCIL PRIORITIES

### 8.1 Fairness for All

The formation of Housing Gateway Limited enables 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. The Facility Letter and grant of a loan to Housing Gateway Limited is a key component of the model agreed by Cabinet and essential to the successful operation of the company.

## **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 was undertaken as part of KD 3782.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

Through the establishment of Housing Gateway Limited 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. 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.

## **Background Papers**

