

MUNICIPAL YEAR 2019/2020 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

OPERATIONAL DECISION OF:

Executive Director - Place
in consultation with the
Executive Director -
Resources

Agenda – Part: 1

KD Num: KD4957

Subject:
Grant of Right to Buy Receipts to North London Muslim Housing Association to provide a mix of 21 dwellings for London Affordable Rent and London Living Rent.

Wards: Highlands, Chase

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1. EXECUTIVE SUMMARY

- 1.1 The Council has set aside right to buy receipts to be utilised by Registered Providers before March 2020.
- 1.2 Report KD 4573 recommended any future decisions to authorise funding and entry into legal agreements, be delegated to the Executive Director – Place, Regeneration and Environment in consultation with Executive Director of Finance, Resources & Customer Services respectively.
- 1.3 This report recommends the Council awards grant funding to North London Muslim Housing Association (NLMHA) and enters into an agreement with them on the terms of its use and on the respective roles and responsibilities of each party.

2. RECOMMENDATIONS

It is recommended that the Executive Director – Place in consultation with the Executive Director – Resources:

- 2.1 Approve the award of RTB funding totalling £888k to NLMHA to part fund the purchase of 9 London Living Rent Properties at Tudor Crescent and to facilitate the provision of 12 London Affordable Rent properties at Holtwhites Hill and Lavender Hill
- 2.2 Agree to enter into a grant funding agreement with NLMHA.

3. BACKGROUND

- 3.1 In October 2017, report KD 4573, reported on the outcome of grant awards approved as part of round one submission. The report recommended changes to the grant submission process to maximise future grant expenditure under round two.
- 3.2 Report KD4573 delegates the decision on future awards of funding and the signing of grant funding agreements with recipients to the Executive Director – Place, Regeneration and Environment and the Executive Director of Finance, Resources & Customer Services respectively.
- 3.3 Following approval of the above report the Council wrote to all the registered providers who own and manage stock in the borough to advise them that a second round of grant funding had been launched. The letter detailed the changes made to the grant award process design to make it more attractive to RPs and to speed up decision-making. The letter advised that round two grant funding would be made available on a continuous market engagement basis, thereby giving providers flexibility to submit claims as and when they are ready for consideration.
- 3.4. NLMHA is seeking to purchase 21 properties developed under the Small Housing Sites 1 project (SHS1). They intend to provide 12 London Affordable Rent properties and 9 London Living Rent properties.
- 3.5 The provision of the RtB receipts requested in this report enables NLMHA to offer 12 properties at London Affordable Rent as opposed to their original offer which involved all 21 units being used for London Living Rent. Enfield Council will also secure 100% nomination rights in perpetuity to all 21 properties.

Entering Grant Agreement

- 3.6 Grant awards are provisional and payment is subject to entering into an agreement with prospective recipients on the terms of use as well as the respective roles and responsibilities of the funder and recipient.
- 3.7 Officers are in the process of finalising negotiations with NLMHA and heads of terms for the sale have been agreed. Officers recommend that the Council enters into a funding agreement with NLMHA to enable them to purchase the 21 properties. 100% of the grant will be payable to NLMHA on signing the agreement as per the provisions of round two funding.
- 3.8 NLMHA will be required to enter into a binding grant funding agreement with the Council prior to the release of the grant. Should they breach the terms of the grant award they will be required to repay the total

grant originally transferred. Should they fail to repay by the agreed date, interest will accrue on a daily basis until payment is received.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council could choose to do nothing. If this course of action was adopted the Council would not be able to fulfil its duty to maximise the provision of affordable housing for rent and utilise this expenditure as agreed.
- 4.2 The Council could choose not to offer the right to buy receipts and request that NLMHA proceed with their original offer which would involve all 21 properties being used for London Living Rent. If the Council pursued this course of action it would lose 12 London Affordable Rented properties. There is also a significant risk that NLMHA would withdraw their offer entirely which negatively impact the financial viability of the SHS1 development.

5. REASONS FOR RECOMMENDATIONS

- 5.1 If approved the funding will;
- Increase the portfolio of affordable rented accommodation in the borough available to the Council;
 - Assist the Council to discharge its statutory duties to households on the housing waiting list and those living in temporary accommodation;
 - Ensure the Council retains 100% nomination rights for 21 affordable units;
 - Potentially encourage other RPs to submit bids for grant funding;
 - Contribute towards the successful delivery and financial viability of SHS1.

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

6.1 Financial Implications

- 6.1.1 The bid total of £888k will be funded from RTB receipts and paid to NLMHA in 2019-20.
- 6.1.2 The granting of these sums to RP's means that they are required to match fund the grant sums with a 70% contribution from their own resources. This means that the Council does not have to find the 70% match funding from within its HRA.
- 6.1.3 The grants will be made from the Council's General Fund Capital Programme (Scheme C380143), with the corresponding capital receipts transferred to fund them.

6.2 Legal Implications

- 6.2.1 The Council is a local housing authority under section 1 of the Housing Act 1985 and has a duty under section 8 of that Act to keep under review the provision of housing in its area. The Council has the power under section 24, Local Government Act 1988 to provide financial assistance, including by way of a loan, to any person in connection with the acquisition, construction, conversion, improvement, maintenance or management of any property to be let privately as housing accommodation. Secretary of State consent must be obtained before this power can be exercised. A number of general consents have been made, and the Council could rely on [consent C of the 2010 general consents as authority for making the working capital loan to RLH].
- 6.2.2 In addition, s1 of the Localism Act 2011 permits the Council to do anything that individuals generally may do provided it is not prohibited by legislation, and subject to public law principles. Section 111 of the Local Government Act gives a local authority power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The recommendations within this Report are in accordance with these powers.
- 6.2.3 The Council must pool RTB receipts centrally under section 11, Local Government Act 2003 and regulation 12, The Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 unless the Secretary of State agrees otherwise. The Council has entered into an agreement with the Secretary of State that permits it to retain a proportion of these receipts for use in providing social (rented) housing. It can either spend the receipts itself or transfer them to a third party to do so provided that it does not have a controlling interest in that party. The Council does not have such an interest in NLMHA, and so can transfer receipts to it as long as the other terms of the RTB agreement are also met.
- 6.2.4 The assessment and grant allocation process has been explained in detail in this report. Officers have confirmed that this process has been carried out in a non-discriminatory, transparent, equal and proportionate way to ensure a grants programme that is value for money and to mitigate against any risk of challenge by organisations on the grounds that the Council is showing favouritism by not following these principles.
- 6.2.5 Any grant agreements entered into in consequence of the recommendations set out in this report must be in a form approved by the Director of Law and Governance. The grants will be unconditional (i.e. the grant will only include obligations to use the funding in a particular way and organisations will be required to account for that spend; the only remedy available will be repayment of the grant) and therefore will not be a contract for services for the benefit of the Council

(the benefit will be for the public). Therefore, the EU procurement rules and the Council's Contract Procedure Rules do not apply.

- 6.2.6 The Council must be mindful of its obligations under the Equalities Act 2010 when taking the decisions set out in the Report, and when utilising its nomination rights under the arrangements going forward. This includes the 'general public sector equality duty' to have regard (when exercising its functions) to the need to eliminate unlawful discrimination, harassment and victimisation and advance equality of opportunity between, and foster good relations between, different groups (s149). The Council should also consider s158 of the Act which allows public authorities to take positive action measures in order to alleviate the disadvantage experienced by those with protected characteristics (and case law has shown the Courts to uphold such measures, where proportionate, in the context of housing allocation policy).
- 6.2.7 The Council must also be comfortable that the grant funding to NLMHA is state-aid compliant. EU state aid rules (Articles 107 to 109 of the Treaty on the Functioning of the European Union (TFEU)) prohibit the Council from using its resources to provide selective financial support to a third party operating in the market. There are ways in which financial support can be provided in compliance with state rules, for example if the support is provided on market terms or a relevant exemption applies, such as an exemption for what are known as services of general economic interest ('SGEI'). One such SGEI is the provision of social housing to those unable to obtain housing under normal market conditions, and this is the exemption the Council is seeking to rely on when awarding grant funding comprised of RTB receipts to registered providers to deliver affordable housing.
- 6.2.8 The European Commission's Decision 2012/21 (the 'Decision') sets out the circumstances in which aid provided to an undertaking carrying out an SGEI is deemed to constitute state aid compatible with the TFEU and so exempt from notification to the Commission. For funding to be exempt, various requirements set out in the Decision must be met. Council officers, in consultation with Legal Services, must ensure that the grant funding agreement with NLMHA reflects those requirements, ensuring that grant monies are applied only to the SGEI purpose, and do not exceed the SGEI costs.
- 6.2.9 This report constitutes a key decision, and the Key Decision procedure set out in the Council's Constitution must be followed.

6.3 Property Implications

- 6.3.1 Property Services have been consulted and confirmed that property implications are not required.

7. KEY RISKS

- 7.1 If the Council does not provide right to buy receipts to NLMHA there is a risk that it could fail to meet its statutory obligations to households on the housing register.
- 7.2 If the Council chooses not to provide NLMHA with the requested RtB receipts there is a significant risk they will withdraw their offer. This risk can potentially be mitigated by selling the properties individually but this sales strategy adds additional risk to the strategy designed to ensure SHS1 is financially viable.
- 7.3 NLMHA could fail to honour the terms of the grant agreement. This risk will be mitigated by ensuring the grant agreement includes a claw back arrangement which will enable LBE to recover grant should NLMHA default on their obligations.

8 IMPACT ON COUNCIL PRIORITIES

8.1 Good Homes in Well Connected Neighbourhoods

- 8.1.1 Providing NLMHA with RtB receipts will maximise the supply of affordable housing in the Borough, providing more opportunities for people in Enfield to access homes they can afford.

8.2 Sustain Strong and Healthy Communities

- 8.2.1 Supporting the acquisition of housing will enable the Council to increase the portfolio of stock it has to discharge its statutory housing responsibility to households that live in the Borough.

8.3 Build our Local Economy to Create a Thriving Place

- 8.3.1 Developing good quality housing in areas where people desire to live will help to create and maintain strong sustainable communities and will contribute to the strength the Enfield economy as additional households within an area provide new opportunities for local businesses.

9. EQUALITY IMPACT IMPLICATIONS

- 9.1 The Council recognises that providing good quality, affordable housing within the Borough helps those most in need of a home and least able to afford property on the open market.
- 9.2 The Council will retain 100% of the nomination rights in perpetuity and properties will be allocated in accordance with the Councils current procedure. NLMHA has an Equal Opportunities Policy and officers are satisfied that the organisation will meet the Public Sector Equality Duty in the on-going management of tenancies.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

- 10.1 The Council will monitor NLMHA's adherence to the terms of the grant agreement on an ongoing basis and will seek to recover the grant should the agreement's terms be breached.

11. PUBLIC HEALTH IMPLICATIONS

- 11.1 Secure housing is a basic human need and essential to maintaining and improving health. Increasing this capacity will improve the Council's ability to improve the health and wellbeing in Enfield.

Background Papers

None.