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## London Borough of Enfield

### Operational Report

Report of [Joanne Drew]

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Subject: [ Sale of 4 Properties to North London Muslim Housing Association]

Executive Director: [ Sarah Cary ]

Ward [Chase]

Key Decision: [ 5333 ]

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### Purpose of Report

1. The purpose of the report is to gain the authority required to dispose of the new build flats shown in the table below to L&Q who will then sell on to North London Muslim Housing Association (NLMHA) in a back to back sale agreement. The ultimate beneficiary is NLMHA and L&Q are their appointed agent. NLMHA have requested that the transaction be structured in the manner previously described.

No.	Address	Property	Post Code	Beds
2	Hume House, 2a Blossom Lane	Flat	EN2 0TG	1
133	Lavender Hill	Flat	EN2 0RH	2
4	Hume House, 2a Blossom Lane	Flat	EN2 0TG	1
8	Hume House, 2a Blossom Lane	Flat	EN2 0TG	1

2. The report seeks authority for the Council to enter into a nominations agreement with NLMHA which will provide LBE with nomination rights over the four flats in perpetuity.
3. The units are currently bound by a s106 agreement (dated 17/9/2014). If required by the Local Planning Authority, the report seeks authority for the Council to enter into such agreement(s) as are necessary (along with other parties with an interest in the land), to cover the change of tenure of the four properties from shared ownership to London Affordable Rent (LAR).

### Proposal(s)

4. To approve and authorise the signing of the Heads of Terms, in the form attached to the Confidential Appendix.
5. To authorise the Council to enter into legal documents substantially based on the Heads of Terms attached to the Confidential Appendix with such changes

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as may be agreed in consultation with the Director of Law and Governance, including any associated variations that may be necessary with regards to the change of tenure of the four properties.

6. To authorise the sale of 2, 4 and 8 Hume House and 133 Lavender Hill to L&Q.
7. To note that L&Q are acting as NLMHA's agent and that L&Q will immediately sell the properties on to NLMHA in a back to back sale.
8. To authorise the Council to enter into a nominations agreement with NLMHA covering 2, 4 and 8 Hume House and 133 Lavender Hill.
9. To authorise the Council to enter into such agreements as are necessary (along with other parties with an interest in the land), to change the tenure of the units as stated in the s106 agreement from shared ownership to LAR.
10. Please see Part 2 of this report.

**Reason for Proposal(s)**

11. NLMHA have offered an amount in excess of market value based on the proposed tenure for the four units along with nomination rights in perpetuity. NLMHA intend to let the properties at LAR. The Council believes that the offer from NLMHA represents best value and best consideration reasonably obtainable as it secures a significant capital receipt and enables LBE to nominate tenants from their housing list or those in temporary accommodation into the properties in perpetuity.
12. The current tenure of the properties in the s106 is shared ownership. The financial model assumed an upfront equity sale of 80% which is no longer considered to be realistic in the current climate and will likely lead to the properties sitting void for an extended period.
13. Please see Part 2 of this report.

**Relevance to the Council Plan**

14. The sale will support the Council's aim of providing good homes in well-connected neighbourhoods by facilitating the provision of affordable housing with stable tenancies which will reduce reliance on Temporary Accommodation. One of the units is also adapted for wheelchair use which will support the Council's efforts to house those with physical disabilities during a time in which adapted properties, or properties suitable for adaptation, are scarce.
15. The sale will support the Council's aim of sustaining strong and healthy communities by providing the Council with additional units which can be used to ensure those requiring housing support are able to remain in Enfield.

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16. The sale will support the Council's aim of building the local economy by the reducing future spending requirements on temporary accommodation and will provide a capital receipt which can be invested elsewhere.

**Background**

17. The four flats are part of a block of 12 developed under the Small Housing Sites 1 (SHS1) project by AMCM (now Claritas), Enfield Council and Enfield Innovations Ltd. (EIL).

18. SHS1 was a 94-unit scheme comprising 57 private units and 37 social/affordable units developed over 7 sites across Enfield. Following the collapse into administration of the original main contractor Climate Energy Homes (CEH), the Council and EIL took the decision to dispose of the 57 private units rather than letting them at market rents.

19. Lavender Hill was one of the 7 sites developed under SHS1 and comprises a 12-unit block of 1 and 2 bed flats of which 8 were originally demarcated as private and 4 as shared ownership under the original s106.

20. NLMHA bought 21 of the 57 private SHS1 units from the Council and EIL in February 2020. NLMHA let the properties at London Affordable Rent (LAR) and granted the Council perpetual nomination rights.

21. NLMHA's original purchase included the freehold of the Lavender Hill site and 8 of the flats in the block. LBE retained a 250year leasehold interest in each of the four shared ownership flats which sit within the HRA.

22. It was originally intended that the properties would be retained by LBE and the s106 dictates that their tenure is shared ownership. LBE applied grant funding from the GLA's Homes for Working Londoner's Fund (HWLF) towards the construction cost of the units.

23. Please see Part 2 of this report.

**Main Considerations for the Council**

24. A valuation was undertaken by RES Property Surveyors in June 2020 and updated in May 2021 which valued the properties sale values at three tenures: market, shared ownership and LAR.

25. It would be inconsistent with the Council's housing strategy and aim to provide more affordable housing in the borough to flip affordable housing units to market where a viable affordable alternative is available. Therefore, despite it offering the largest sales receipt, market sale is not considered to be a viable option.

26. The financial model assumed that it would be possible to sell an 80% upfront stake in the four units with rent being charged at 2.75% of the unsold equity. The Council has found it difficult to sell similar units at Jasper Close on the same terms and has been advised by Savills to drop the initial equity stake to

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25%. Therefore, shared ownership sales are not considered to be viable on the required terms and will likely leave the properties void for an extended period.

27. The Council has approached the GLA to request additional grant funding which would allow LBE to retain ownership of the units and to let them at LAR. Unfortunately, the GLA cannot provide an answer quickly and it is not certain that the answer will be positive.

28. The offer from NLMHA represents best value and best consideration reasonably obtainable for the Council as it generates a significant capital receipt which is in excess of the value of the units if their tenure is converted to LAR. Additionally, NLMHA will provide the Council with nomination rights in perpetuity which will contribute to the Council's efforts to tackle demand for affordable housing in the borough and provide perpetual access to a much-needed wheelchair adapted unit.

29. The units are designated as affordable housing under the s106 so the Council's s123 duty to achieve best consideration is met by maximising their value at an affordable tenure rather than market sale.

30. NLMHA use L&Q as their development/sales agent and require the transaction to be structured as a back to back sale whereby LBE will sell the 4 units to L&Q who will then immediately sell on to NLMHA.

31. Please see Part 2 of this report.

**Safeguarding Implications**

32. There are no safeguarding implications associated with this report.

**Public Health Implications**

33. There are no public health implications associated with this report.

**Equalities Impact of the Proposal**

34. Corporate advice has been sought a full EQIA is not considered to be proportionate due to the number of people affected and NLMHA being a trusted partner with whom the Council already has nomination rights on other schemes.

35. The sale to NLMHA and the subsequent nominations agreement will support the Council's ambition to provide accessible housing pathways and homes for everyone by ensuring the Council can nominate tenants into properties let at affordable rents by a trusted provider in perpetuity.

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## **Environmental and Climate Change Considerations**

36. The properties were constructed to Code 4 of the Code for Sustainable Homes and so are highly thermally efficient. Solar panels have also been placed on the roof.

### **Risks that may arise if the proposed decision and related work is not taken**

37. If the offer from NLMHA is not accepted soon it will be withdrawn. This would likely to lead to a protracted process of attempting to sell the properties on an individual basis under shared ownership terms which are less attractive than those modelled.

38. If the offer from NLMHA is rejected, attempts to sell the units on an individual basis may be hindered by Covid-19 restrictions.

39. If the offer from NLMHA is not accepted it is likely to result in an extended void period and LBE will incur additional site security, council tax and utility costs.

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

40. The sale could take longer than anticipated resulting in additional void costs. This risk is mitigated by the fact that both parties have already gone through the same process for the other 8 units in the building which should reduce the amount of due diligence required and should lead to a swift sale.

41. The sale could be delayed if NLMHA are unable to let the properties due to Covid-19 restrictions. This risk can be mitigated by ensuring the sale is completed quickly and the Council pre-allocates their nominees.

42. Please see Part 2 of this report.

## **Financial Implications**

43. This report is proposing to sell 4 units in the Small sites 1 project to North London Muslim Housing Association (NLMHA).

44. The sale of these units to NLMHA will generate a capital receipt to the HRA. A valuation was completed in June 2020 and updated in May 2021 which shows the offer from the Housing Association to be higher than the valuation based on their proposed tenure.

45. These units would be let by NLMHA at London Affordable rents and the Council will get nomination rights on the properties.

46. The sale of these units to North London Muslim Housing Association will guarantee a capital receipt in 2021-22 to assist in funding the development programme. It should be noted that the HRA Business Plan assumes the receipt from sales income in 2020-21, however this has changed, and the receipt is now expected in 2021-22. This reduction will be funded from HRA

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reserves and the Business Plan will be updated to reflect this change. If the HRA were to continue to market these units as Shared Equity or Shared Ownership, with current market conditions, there is a high risk that these properties would remain empty for a significant amount of time, generating void loss and other expenses to the HRA.

47. Please see Part 2 of this report.

**Legal Implications**

48. Section 111 of the Local Government Act 1972 permits local authorities to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of their functions.

49. A local authority has a general power of competence under section 1(1) of the Localism Act 2011 to do anything that individuals may do, provided it is not prohibited by legislation and subject to public law principles. A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others. The proposals in this report are compliant with the Council's general power.

50. In entering into property transactions, the Council must comply with the provisions of its Constitution, including but not limited to its Property Procedure Rules, which set out mandatory procedures regarding (amongst other things) the acquisition, management and disposal of property assets. In addition, Section 123(2) Local Government Act 1972 requires a Local Authority to secure the best consideration reasonably obtainable when it disposes of land except on a short tenancy, unless it has the benefit of an express or general consent of the Secretary of State. A short tenancy is defined as a lease of not more than 7 years or the assignment of a lease which has not more than 7 years unexpired of the term.

51. A valuation was undertaken by RES Property Surveyors in May 2021 which confirms that this transaction complies with s123(2) Local Government Act 1972 and is best consideration reasonably obtainable.

52. The Council is required as a best value authority under section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. It is considered that this duty is fulfilled by the proposed disposal by:

- (a) obtaining best consideration reasonably obtainable;
- (b) by ensuring that the Council generates a significant capital receipt;
- (c) by securing nomination rights in perpetuity from NLMHA which will assist the Council in providing affordable housing and also a much-needed wheelchair adapted unit.

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53. The Council has a general power under the Housing Act 1985 to dispose of property held for housing purposes. By section 32 Housing Act 1985 a voluntary disposal requires Secretary of State's consent unless a general consent has been granted as set out in the General Housing Consents 2013 issued by the Department for Communities and Local Government. This transaction falls within A11 of the General Housing Consents 2013 and therefore Secretary of State's consent is not required. Under the terms of the s106 agreement these 4 units must be let for shared ownership which is social housing. It is noted that they are to be disposed of by way of sub sale to NLMHA (which is a registered provider of social housing) for the purposes of being let as London affordable housing. Checks and enquires need to be raised with the Local Planning Authority with regards to this change.
54. The Council intends to dispose of the leases of the 4 properties to London and Quadrant who will simultaneously dispose of them by way of sub sale to NLMHA. The Council will simultaneously enter into a nominations agreement with NLMHA for the duration of the term of the leases in order to nominate the tenants to occupy these properties as affordable housing. A restriction will be included in the contract to protect these nomination rights. The s106 agreement will have to be varied to allow the properties to be let for London affordable housing instead of shared ownership before completion can take place. Further due diligence will be required with regards to this transaction.
55. All legal documents to be entered into in connection with the subject matter of this report must be approved in advance by Legal Services on behalf of the Director of Law and Governance.

**Workforce Implications**

56. There are no workforce implications associated with this report.

**Property Implications**

57. HRA property implications: these are found throughout this report.
58. Corporate property implications: none.

**Other Implications**

59. None.

**Options Considered**

60. The Council considered selling the properties on market terms. However, this has been ruled out as it does not meet the Council's requirements to deliver more affordable housing in the borough and a viable affordable offer is available.
61. The Council attempted to obtain additional grant funding from the GLA to facilitate LBE letting the properties directly at LAR. Unfortunately, the

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timescales for GLA approval are too long and a positive decision is not guaranteed.

62. The Council considered selling the properties under the modelled shared ownership terms. The Council's experience at Jasper Close indicates that this is not a viable option.

**Conclusions**

63. The offer from NLMHA represents the best balance between void costs, Covid-19 risks, capital receipt and the provision of additional affordable housing available to the Council. Therefore, it is recommended that the offer from NLMHA is accepted and that the Council proceeds with the sale.

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Report Author: Liam Preston  
Head of Operations – Private Housing Solutions  
[Liam.preston@enfield.gov.uk](mailto:Liam.preston@enfield.gov.uk)  
020 8132 1265

Date of report

**Appendices**

None.

**Background Papers**

None.