



London Borough of Enfield

Report Title	Lease of 103 Flats in Luton
Report to:	Cllr George Savva
Date of Report:	31 st July 2023
Cabinet Member:	Cabinet Member for Social Housing
Directors:	Sarah Cary, Executive Director Housing, Regeneration and Development Joanne Drew, Director of Housing and Regeneration
Report Author:	Kayt Wilson (Head of Private Housing Solutions)
Ward(s) affected:	All
Key Decision Number	KD 5650
Implementation date, if not called in:	4 August 2023
Classification:	Part 1 & 2 (Para 3)
Reason for exemption	Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Purpose of Report

1. This report identifies the opportunity to secure 103 homes in Luton as an alternative to unsuitable and expensive temporary hotel accommodation. This report seeks approval from the Council, as Shareholder, for Housing Gateway Ltd (HGL) to enter into a 5 year lease arrangement and for the Council to enter into a nominations agreement with HGL.

Recommendations

- I. The Council, in its position as HGL Shareholder, agree for HGL to enter into a 5 year lease for 103 flats in Luton. The signing of the lease will be completed via HGL's scheme of delegation.
- II. Agree for the Council to enter into a nominations agreement with HGL and delegate negotiation of terms and sign off to the Director of Housing and Regeneration in consultation with the Director of Finance, Commercial.
- III. To note that the terms of the proposed lease will be finalised and agreed by HGL, in consultation with the Director of Housing and Regeneration, with legal advice to be provided.

Background

2. The Council is experiencing unprecedented demand from residents losing their homes. This is at a time when the private rented sector is contracting, rents are rising and there is a severe shortage of affordable privately rented homes across the whole of the southeast of England.
3. This shortage of affordable accommodation within the Borough means that few households have the financial capacity and opportunity to move out of temporary accommodation.
4. The supply of temporary accommodation has also fallen, and landlords are exiting the temporary accommodation market as they can gain higher returns through privately renting their properties.
5. The number of households being accommodated in hotels rose to over 290 and over 173 of these had been in hotels for more than six weeks, whilst these numbers have now reduced, there is a real risk of them increasing again if alternative suitable accommodation is not found.
6. The impact on families staying for extended periods in hotels is immense and this places extreme pressure on both the families and officers. Whilst this type of accommodation should only be for emergencies the reality is that it is being used for extended periods of time.
7. This is mirrored by the financial cost to the Council. Without action a £20m deficit is predicted for 2023-24, directly caused by the cost of hotel accommodation and the impact of the welfare system of temporary accommodation.
8. Full details of the market factors impacting the availability of accommodation in Enfield can be found in the Cabinet paper "Homelessness in Enfield (5) – Housing residents where accommodation is affordable", KD 5625.

Shortage of Accommodation – Financial Impact

9. The Housing Advisory Service rely on properties that can be rented at Local Housing Allowance (LHA) levels so that they are affordable to residents. The supply of private rented properties at LHA rents has reduced by 90% since April 2021 and 84% since April 2022. With LHA frozen at 2020 rates there is little prospect of an increase in supply of

affordable private rented accommodation within the borough and the trend of landlords exiting the market is set to continue over 2023.

10. This shortage of temporary accommodation means that the service has been dependent on commercial hotels and shared accommodation in recent months. This is not suitable for residents, particularly those with children, for any length of time.

11. The chart below shows the financial spend on commercial hotels.



12. These pressures are not unique to Enfield and are being felt nationally. The problem is most acute in London and London Councils have been collating data from boroughs to monitor the effect of the current challenges. The table below shows the year-on-year changes to February 2023 across Greater London which demonstrates the pressures and inability to seek rehousing for residents across the wider London area.

Homelessness pressures

	February 2022	February 2023		Number of responses
Total number of homelessness presentations	5,545	5,592	+0.8% +47	23
Total number of households owed a prevention or relief duty	5,609	6,418	+14.4% +809	25
Total number of households in TA	47,961	50,168	+4.6% +2,207	25
Total number of Children in TA	61,128	63,418	+3.7% +2,290	21
Families in Bed and breakfast (B&B) hotels (including shared annexes)	580	1,550	+167.2% +970	24
Families in B&B hotels (including shared annexes) for longer than 6 weeks	64	591	+823.4% +527	23

Strategy

13. The Council’s aim is to reduce the use of hotel accommodation by the end of September 2023 and to deliver sustained reductions in the use of temporary accommodation thereafter. In order to deliver this aim the

Council has been reviewing innovative solutions which provide much needed, good quality accommodation quickly.

14. One of the opportunities identified is a new build development of 103 flats in Luton. The building is being offered by a for profit Registered Provider. The Registered Provider will own the building and provide full management.
15. Further details of the property, lease and sale terms can be found in the part 2 report.

Options

16. The Council has considered the following options to procure the block:
 - a. The Council enters into a lease agreement with the Registered Provider,
 - b. Housing Gateway Ltd enter into a lease agreement with the Registered Provider,
 - c. Housing Gateway Ltd purchase the building.

Option A - Council Lease the Building

17. It is possible for the Council to enter into this lease directly and use the flats as temporary accommodation. However, this would mean the flats remain as temporary accommodation and due to the Housing Benefit regulations, the Council would not be able to recover the full amount of rent from the tenants.
18. As a result, this option delivers £220k pa less savings than options b or c.
19. Also, the Council's strategy is to minimise Temporary Accommodation use, which this option will not deliver.

Option B - Housing Gateway Ltd Leases the Building

20. HGL is the Council's housing company which was created in 2014 to provide the Council with housing solutions as an alternative to temporary accommodation. Since this time HGL has created a portfolio of 633 owned properties and 261 leased properties, delivering savings in excess of £13.2m to the Council.
21. HGL can enter into a lease with the Registered Provider. The Registered Provider would deliver the housing management and HGL would be responsible for lease payments and income collection. The Council would be responsible for placing families in the flats.
22. The Council would need to create a nominations agreement and fee which would be payable to HGL. Without this arrangement, the proposal is not financially viable. The nominations agreement would formalise the expectations between the Council and HGL about accommodation availability and placing families in the building.
23. In this scenario the flats could either be classed as temporary accommodation or private rented accommodation dependent upon the Council discharging their housing duty.

24. With either option, the flats would be shielded from the TA Housing Benefit regulations. Therefore, this option would deliver the most savings to the Council.

Option C - Housing Gateway Ltd Purchases the Building

25. HGL could purchase the block, own and manage the building. The Council would be responsible for placing families in the flats.

26. In this scenario the flats would be classed as private rented accommodation as with option B. In turn it would provide the same benefits of reducing temporary accommodation and increasing savings as option B.

27. In order for HGL to purchase the property surveys, a red book valuation and due diligence would be required as part of the conveyancing process. This is estimated to take a minimum of 6 months.

28. HGL would also need to manage and repair the property either directly or by engaging a third-party contractor to fulfil this function.

29. Due to the type of asset, it would not be recommended that the building would be disposed of before a 10-year term has expired. Market intelligence suggests that this type of block will not hold its value in the short term, in the same way that individual street properties would. This, combined with the predicted drop in the property market, due to the economic climate, suggests that if the building is purchased, it should remain an owned asset until at least 2033.

Other Options Considered

30. The Council has the option of not using the block to house families and could continue to focus on leasing stock elsewhere. However, the evidence in this report shows that finding suitable accommodation is particularly challenging in the present market and whilst families remain in hotel accommodation there will continue to be large budget pressures for the Council.

Recommendation and Reasons for Recommendation

36. The preferred option is B: HGL leases the building.

31. Option C: HGL purchases the building. This option is not recommended as the capital investment required from both HGL and the Council is significant and doesn't provide value for money over other capital opportunities. In addition, this type of asset would need to be held for the long term (a minimum of 10 years) to avoid any capital depreciation. Finally, the sale would take longer to complete in turn delaying the availability of the flats.

32. Option A: Council lease the building, is not recommended as this option does not give the flexibility for the flats to be moved from temporary accommodation to discharge of duty.

33. Option B: HGL lease the building. This is the most cost effective of all options, as this shields the flats from the TA Housing Benefit regulations without requiring a large capital outlay. Also, this is the most flexible option as it allows the flats to be used either as TA or as private rented accommodation.

Risks & Mitigations

34. As with all large-scale leases there are risks attached to the proposal. Whilst these risks cannot be removed altogether, steps have been taken to mitigate them.
35. Risk: There is a risk that not enough suitable tenants can be found to move to Luton.
Mitigation: The Council has a clear Placement Policy which sets out the criteria for prioritising residents for more local accommodation. The Policy sets out the expectation that almost all households will need to relocate. There are currently 3,100 families in TA who all have the potential be moved to Luton and officers are already mobilised to review casework files for suitable tenants. Priority will be given to those families currently in hotel accommodation. If, in the unusual circumstance that the Council could not find homeless families to place in the building, it could be offered to other Boroughs or the Home Office.
36. Risk: There is a risk that quality of accommodation will not be sufficient.
Mitigation: The property is a new build development, built to comply with all building regulations. Fixtures and fittings will all be new. Furthermore, the developer will have warranties for the work and the Registered Provider will be able to rely on these warranties. The due diligence on the Registered Provider has shown that they are scored an A on trading performance, profitability, working capital and gearing, therefore they have sufficient funds to maintain the building.
37. Risk: The lessee is unable to provide vacant possession at the end of the lease term.
Mitigation: HGL / the Council will work collaboratively to ensure that all residents are assisted to find alternative private rented accommodation at the end of their tenancy. This will involve tailored case work to provide support and assistance for families to find alternative accommodation.
38. Risk: The tenants will remain at Luton for more than 2.5 years meaning that the Council cannot nominate another homeless family to the accommodation, therefore realising the hotel cost avoidance.
Mitigation: As with the point above, HGL / the Council will provide involve tailored case work to provide support and assistance for families to find alternative accommodation. In addition, the rent will increase to a level in line with market rent after a two year term. This will be clear at the outset of the tenancy and will ensure that tenants can plan for the rent increase and take responsibility for their own rehousing.
39. Risk: Delay to the building works leading to a delay to the proposed ready to let date
Mitigation: The lease will not commence until the building is ready for occupation therefore the Council & HGL will not be exposed to additional costs. However, any delay to occupation will impact the Council as

families will be kept in hotel accommodation for longer increasing the budget pressure.

Relevance to Council Plans and Strategies

Good homes in well-connected neighbourhoods

40. In seeking to provide quality accommodation for homeless families, the proposal will increase the number and quality of homes available to families who would otherwise be living in hotel accommodation.

Sustain strong and healthy communities

41. Poor quality housing and homelessness have been identified as key factors in health inequality. Through reducing the number of households reaching crisis point and increasing the supply and quality of rented homes we will help to reduce the impact of homelessness and poor housing on the health and wellbeing of our residents.

Financial Implications

42. There are a range of options open to the Council for the use of the building in Luton, all of which will be significantly cheaper than the ongoing cost of housing tenants in commercial hotel rooms.

- a. The Council enters into a lease agreement with the Registered Provider,
- b. Housing Gateway Ltd enter into a lease agreement with the Registered Provider and the Council nominate homeless families into it,
- c. Housing Gateway Ltd purchase the building and the Council nominate homeless families into it.

43. Either of the leased options will enable the Council to avoid capital finance costs and completion is likely to be faster. There is a CPI uplift included in the leased options. Purchasing the block would enable the Council to avoid that charge.

44. The cost of commercial hotel rooms varies constantly with the monthly net spend on commercial hotels now c.£1m and an annual spend projected at £11m. The Council are only able to claim rental income from the tenants of those rooms to the value of c. 17% of the cost.

45. Housing tenants in Luton will result in a significant cost reduction per night for Enfield, with even the most expensive flat costing a third of the price of an average hotel room.

Option A - Council Lease the Building

46. The Council could lease the properties directly from the supplier and use them as TA during the term of the five year lease. A breakdown of the properties available and the cost in the first year is detailed in part 2 of the report.

47. The income received will mostly be via Housing Benefit and so will be subject to HB Subsidy regulations. That means only 90% of the 2011 Luton LHA rate is guaranteed income. The income generated from this scheme is unlikely to increase over the lease period when the properties are used as TA. This means the properties will become more expensive over time as the terms of the lease include an increase each year, while the rental income will not increase.
48. The maximum lease cost per annum is detailed in part 2 of the report.
49. Using the accommodation this way the Council will incur a net loss. However, this still represents a significant saving over continued use of commercial hotels.
50. There is also the possibility that this lease arrangement may be subject to Stamp Duty Land Tax (SDLT), but the scheme will still provide significant savings over the use of hotel accommodation even if SDLT is due.

Option B - Housing Gateway Ltd Leases the Building

51. An alternative to leasing the building via the Council is for HGL to secure the five-year lease on the block. In this instance the flats could either be used as temporary accommodation via HGL, or the Council could discharge its homeless duty (DoD) and the flats would be classed as private rented accommodation. In the case of using the building as private rented accommodation (DoD basis), this would reduce the number of residents currently housed in TA by 103.
52. On a standard DoD basis, the Council relieving its duty to the tenants would also end any financial impact from them on the Council. However, in this instance HGL will require an ongoing nominations fee from the Council to ensure the viability of the scheme.
53. As HGL are not bound by the TA subsidy regulations they will receive a higher rent for the units than the Council can. This is detailed in part 2 of the report.
54. As HGL can receive the full LHA rate for each of the units more income can be collected than the Council are able to obtain. Should the LHA rate increase over time HGL will also be able to lift their rates in line with the increase.
55. Using the accommodation in this fashion reduces the year 1 net deficit and is cheaper than using the units as. As this option is cheaper for Enfield than holding the units as standard TA the saving against commercial hotels will be even larger.
56. There is also the possibility that this lease arrangement may be subject to Stamp Duty Land Tax (SDLT), but the scheme will still provide significant savings over the use of hotel accommodation even if SDLT is due

57. A summary of the projected nomination fee payable by the Council each year is detailed in the part 2 report.
58. The Luton scheme represents excellent value for money particularly when taking the scale of the scheme into consideration. The supply of rental units across the country is currently at an all time low and many agents are requesting and obtaining rents which are higher. Further details can be found in the part 2 report.
59. Should the market ease over time, it is believed these units are of sufficient quality to allow the Council to use cheaper accommodation for TA or to move tenants further afield and re-let Luton at market rent levels in order to reduce the cost of the scheme.
60. The Council must take steps now to ensure there is a supply of tenants which have been identified and assessed as suitable to move into this accommodation in order to minimise void loss and ensure the units at Luton are fully tenanted in the shortest possible time.
61. The Council must also ensure residents in TA are only offered two suitable properties and if both are refused the Council discharges duty on that basis.
62. The financial profile of the Luton scheme for HGL is detailed in the part 2 report.
63. The profile of the scheme dictates that HGL will need significant funding from the Council via a nominations fee to make the Luton scheme viable as outlined above. That nominations fee will be funded by the cost the Council are avoiding in running this scheme versus holding tenants in TA. It is suggested the Council make payment of the nominations fee on a quarterly basis in line with other nominations fee payments made by the Council to HGL for Enfield Let properties. This payment will ideally be made in advance to ensure consistent cashflow as the lease for Luton requires a monthly payment in advance.
64. The cost of servicing the properties detailed in the part 2 report are in line with the amounts which the Council would expect to incur should it be run as standard TA. The income in year 1 is adversely affected by expected void periods as HGL take control of the building and the Council begin to refer tenants into it

Option C - Housing Gateway Ltd Purchases the Building

65. As detailed elsewhere in the report HGL would purchase the 103 units and subsequently take on the associated costs of owning the units, which are in apartment blocks.
66. HGL would purchase the units and the financial detail of this can be found in part 2 of this report.

67. The Council would secure nomination rights on the units allowing the Council to place people currently in temporary accommodation into those homes. This will result in a saving to the council.

68. The cost will be accounted for in compliance with the Council's capitalisation policy. Any costs that cannot be capitalised will be charged to the revenue budget. Equity investment into a subsidiary is considered capital under the Council's capitalisation.

Summary

69. As per part 2 report.

Legal Implications

70. Section 2 of the Local Government Act 2000 provides that local authorities have power to do anything they consider likely to promote or improve the social, economic or environmental well-being of their area or the persons resident therein. Therefore, the Council has discretionary power to pursue a course of action if it is considered likely to have social, economic or environmental advantages in the area. In exercising such discretionary power, the decision makers need to take into account all relevant considerations.

71. Public law principles will apply to the decisions made by the Council, including the Council's duty to take account of its fiduciary duty and to act prudently. The Council is also under a general duty to act reasonably and show that its decisions are made after having given due and proper consideration to all relevant factors. Furthermore, 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. In this regard, it is noted that the report seeks to increase access to supply of and create financial savings on temporary accommodation costs.

72. Local authorities have a duty to provide accommodation to homeless people who meet the statutory criteria under the Housing Act 1996 ("the Act"). If an accommodation duty is owed, the local authority must ensure that suitable accommodation is provided. This is a mandatory duty which is not capable of being deferred. A local authority can only discharge an accommodation duty by securing that "suitable" accommodation is available for the applicant and their household members.

73. The concept of "suitability" is central to the ways in which a local authority can discharge its housing functions. The Homelessness (Suitability of Accommodation) (England) Order 2012 says that in determining whether accommodation is suitable for a person, a local authority must take into account such matters as the location of accommodation including where the accommodation is situated outside its district, the distance from its district and the significance of any disruption which may be caused by the location of the accommodation to the employment, caring responsibilities or education of the person or members of the person's household. In

addition, accommodation must be affordable and be the right size for the household.

74. Section 208(1) of the Act says, “so far as reasonably practicable a local housing authority shall in discharging their housing functions under this Part secure that accommodation is available for the occupation of the applicant in their district.” This means that so far as reasonably practicable a local authority must try and provide accommodation in the local authority’s area.
75. Section 11 of the Children Act 2004, requires local authorities, when discharging its housing functions, to have regard to the need to safeguard and promote the welfare of children when making decisions about suitability of accommodation for a person and their household. This means that when arranging in borough or out of borough accommodation, local authorities must consider the educational and welfare issues of a child.
76. The case of *Nzolameso v City of Westminster* [2015] UKSC 22 involved issues regarding the Children Act 2004 and out of borough accommodation. The Court said that the question of whether accommodation offered is “suitable” for the applicant and each member of their household requires the local authority to have regard to the need to safeguard and promote the welfare of any children in her household. This requires the local authority to identify the principal needs of the children, both individually and collectively, and have regard to the need to safeguard and promote them when deciding whether accommodation is suitable.
77. Where homeless people are accommodated out of borough, this will engage the duties under the Equalities Act 2010. Broadly, that is a duty to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation and advance equality of opportunity and foster good relations between different groups. When the authority is looking to offer accommodation out of borough, the Equality Act duties will need to be considered to prevent any unlawful discrimination.
78. As has been referenced earlier in this report, the proposals may be subject to Stamp Duty Land Tax (SDLT). Once the terms of the Lease are settled, the applicable SDLT rate can be calculated and in line with HMRC notification requirements, payment of any initial sum due will be payable within 14 days of the completion date. Furthermore, subsequent returns will need to be filed, following each rent review period, pursuant to the Finance Act 2003.
79. It is noted that a nominations agreement is proposed between HGL and the Council. Such agreement, together with any other 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.

Legal implications inserted by EP, DC and ID based on version of report circulated on 12 July 2023

Equalities Implications

80. The decision to lease or purchase the property in Luton does not have any direct equalities implications. The impact on protected groups derives from the Placement Policy (approved by Cabinet on 7 June). This sets out the methodology used to allocate both temporary accommodation and privately rented homes and is designed to protect the most vulnerable residents. The policy will be used for the allocation of homes procured in Luton and other parts of the country.

81. An Equalities Impact Assessment has been completed for the Placement Policy. This found that although there was a differential impact on groups with protected characteristics, the impact of the Placement Policy was broadly positive. The Placement Policy sets out the criteria that will be used to prioritise the most vulnerable households for the extremely limited supply of more local accommodation. The key impacts on groups with protected characteristics are as follows:

Socio-Economic Deprivation

82. The biggest differential impact was in socio economic deprivation which reflects the link between poverty and homelessness. The widening gap between benefit levels and rents across the Southeast is both driving increases in homelessness and limiting the supply of properties that can be used as an affordable solution either as temporary accommodation or as a permanent home. Placing households in areas where there is closer alignment between rents and Local Housing Allowance is the only option open to the council to resolve the housing needs of poorer households.

83. Equally there are 750 households in more settled temporary accommodation who would become benefit capped if they moved out of temporary accommodation. We will need to work closely with these households to secure employment before a sustainable offer of accommodation can be made.

Ethnicity and Religion

84. Just 14% of households for whom the Council has accepted a duty described themselves as 'White British', compared with 52% of Enfield's wider population. Luton is a multicultural area which celebrates many different ethnicities. However, it will be important to connect residents with their new communities. This issue was also identified as applicable for religious groups.

Marriage and Civil Partnership and Pregnancy and Maternity

85. There is also an impact around marriage and civil partnership and pregnancy and maternity. For single parent households and new parents who are more dependent on local support networks, relocation to a new area will be challenging. Whilst the Placement Policy will prioritise the more vulnerable households for local accommodation there will be a need to ensure that households have access to local support networks and provided with links to local community groups.

Disability

86. Households with a disabled member of the family are more likely to be dependent on local support networks and services. The Placement Policy is designed to ensure that the most vulnerable households will be prioritised for local accommodation. Any placements in Luton will consider family members with disabilities and a demonstrable need to remain more locally.
87. We will need to continue to monitor the impact of the policy to ensure that there are no unintended consequences.

HR and Workforce Implications

88. There are no HR and workforce implications for this report.

Public Health Implications

89. Poor quality housing and homelessness have been identified as key factors in health inequality. Through reducing the number of households reaching crisis point and increasing the supply and quality of rented homes we will help to reduce the impact of homelessness and poor housing on the health and wellbeing of our residents.
90. The effects on households in hotel accommodation are extreme as there are no cooking facilities or private areas. The health implications are therefore that residents are dependent on takeaway food which is both unhealthy and expensive.

Safeguarding Implications

91. Safeguarding is a key concern for the service. Keeping households in hotel accommodation for extended periods is a key safeguarding risk. There are currently 32 children in hotel accommodation where Children and Family Services are actively involved, and the nature of the accommodation is interfering with our ability to fulfil our statutory obligations. Moving families to self-contained accommodation will reduce the risks to vulnerable households and residents.
92. We will assess the needs of each household to be relocated against the Placement Policy. This prioritises the most vulnerable households for the extremely limited supply of local accommodation.
93. We will ensure a coordinated approach with Children and Family Services to ensure that the welfare of children and families is paramount.

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Appendices

Placement Policy EQIA.

The placement policy EQIA is applicable to this report as all tenants will be allocated via the existing placement policy.

Background Papers

None.

