Executive
6 April 2009

Report from the Director of Housing and Community Care

Wards Affected:
NONE

Sub Regional Temporary to Settled Housing Scheme

Forward Plan Ref: H&CC-08/09-08

Appendices G3, G4, L1, L2, L3, L4, F1, F2, F3, F4, F5 and F6 of this report are Not for Publication.

1.0 Summary

1.1 The Executive gave approval to award a contract for the Sub Regional Temporary To Settled Housing scheme (the Scheme) to the Special Purpose Vehicle to be established by the LloydsTSB Consortium in February 2008, and delegated authority to the Director of Housing and Community Care to finalise negotiations and contract documentation in consultation with the Director of Finance and Corporate Resources and the Borough Solicitor.

1.2 Negotiations with the LloydsTSB Consortium have been on-going since the Executive's approval was received in February 2008 and there have been changes to the Scheme which affect the various contractual arrangements that are to be entered into. This report sets out the changes that have been made to the Scheme which include the following:

i) reducing the number of properties to be delivered under the Scheme from 1,400 homes to 861 homes;
ii) replacement of grant funding allocated under the Settled Homes Initiative (£10m) with funding of £54.5m by the Homes and Community Agency to deliver the Scheme;
iii) extending the leasing term from 15 years to 16.5 years;
iv) withdrawal of the London Borough of Ealing, the London Borough of Hammersmith and Fulham and the Royal Borough of Kensington and Chelsea from participation in the Scheme;
v) the establishment of London Housing Partnerships Limited (LHP), by the Lloyds Consortium, as the special purpose vehicle to deliver the Scheme;
vi)

vii) the increase of the number of units of accommodation that the council will procure from 300 to 320 units.

1.3 In view of the changes to the Scheme since it last came before the Executive, this report updates Members and again requests authority to award the contract as required by Contract Standing Order No 88, on the basis of the revised contractual requirements, to LHP. The Executive is also asked to delegate authority to the Director of Housing and Community Care to finalise the contractual documentation in consultation with the Director of Finance and Corporate Resources and the Borough Solicitor.

2.0 Recommendations

2.1 That Members note the key changes to the Sub Regional Temporary to Settled Housing Scheme since the Executive initially approved the award of the contract to the Special Purchase Vehicle to be established by the Lloyds Consortium in February 2008 as outlined in paragraph 3.14

2.2 That following changes to the Scheme, Members re-confirm the previous decision of the Executive to approve the award of contract for the procurement and supply of units of accommodation and the provision of management and maintenance services for Brent Council to the Special Purchase Vehicle now established by the Lloyds Consortium, namely London Housing Partnerships Limited (LHP).

2.3 That Members re-confirm the previous decision of the Executive to delegate authority to the Director of Housing and Community Care, in consultation with the Director of Finance and Corporate Resources and the Borough Solicitor, to agree the contractual agreements summarised in paragraph 3.14 which shall be entered into by the council and LHP or their sub contractors.

2.4 That Members re-confirm the previous decision of the Executive to authorise the Director of Housing and Community Care to agree a form of agreement with the other participating West London boroughs for the effective working of the Scheme.

2.5 That Members authorise the Borough Solicitor, or authorised delegate on her behalf, to execute all of the legal agreements, contracts, leases and other documents on behalf of the council referred to in this report (and such other legal agreements and documentation which may be necessary to give full effect to the Scheme), subject to receiving confirmation of the grant allocation to LHP from the Homes and Communities Agency, or executing such contracts and other documentation with the pre-condition that they shall only come into effect upon the issuing of the said grant allocation.

2.6 That Members authorise the Director of Finance and Corporate Resources to sign a certificate or certificates under the Local Government (Contracts) Act 1997 to LHP in respect of the Scheme and to LHP's funders, LloydsTSB, in respect of any direct agreement entered into between the council, such funders and LHP.

2.7 That Members agree that the Director of Finance and Corporate Resources will be fully indemnified by the council in the event of any claim against him arising from the provision of any certificate he may issue in accordance with recommendations/decision in paragraph 2.6 above.

2.8 That Members agree that the Director of Housing and Community Care shall seek to obtain any necessary Secretary of State consents and approvals in respect to this Scheme

3.0 Detail

Background

3.1 The aim of the Scheme is to utilise the public funding stream that supports the provision of temporary accommodation which will ultimately result in the provision of permanent housing which can be let at affordable rents. At present the provision of temporary accommodation is supported by market rents which are largely met from housing benefit. The majority of temporary accommodation properties are leased from private landlords by local authorities and social landlords on a short term basis (typically 3 to 5 years). The costs of financing these schemes are supported by market rents, which in turn are met largely from housing benefit. There are little costs to the council in this arrangement but high levels of public subsidy through Housing Benefit are required for no long term benefit as the investment in the properties does not result in the conversion of more affordable homes for rent or sale.

3.2 The borough is in need of both additional affordable housing and a supply of temporary social housing to meet on-going demand from homeless households. The report on Supply and Demand and Temporary Accommodation presented to Members at the Executive meeting on 16th March 2009 sets out the current forecasts over the next three years. Given the current economic climate, officers anticipate that the demand from all groups will increase by 15% over the next three years. Permanent supply in 2009/10 is expected to fall by nearly 10%[1] as developments do not complete. At present we have not seen a surge in homeless demand, and we have made significant reductions in our overall usage and number of households that we accept through our homelessness prevention initiatives.

3.3 In Brent, we are keen though to reduce our procurement of short term leased dwellings as part of our overall strategy to reduce temporary accommodation and meet the Government's target to halve temporary accommodation usage by 2010. As part of developing a successful homelessness prevention strategy we also want to encourage and support private sector landlords to rent their properties to tenants directly rather than rely wholly on the leasing schemes which offer them guaranteed income. The guaranteed rents offered to the private sector landlords make an allowance for costs incurred by the council and its partners in managing these properties on their behalf and therefore create differential from the market rent levels that could be achieved if the private sector landlords were to manage the properties themselves. As the portfolio of temporary leased properties reduces, the fixed costs incurred by the council and its partners will need to be met from a reduced number of properties in management. This in turn may have a knock on effect on the lease rents that can be offered to private sector landlords. Given this, private sector landlords may seek alternative options that can assist them in maximising the rental income that they are able to achieve.

[1] In 2008/09 the council is expected to achieve 950 permanent lettings in council housing stock and from nomination received from other social landlords. In 2009/10, the number of permanent lettings is forecast to reduce to 857 lettings.

3.4 At present the council has 3,668 households in various forms of temporary accommodation. The council also has a legal duty to provide these households occupying temporary accommodation with suitable accommodation. In particular, short term leased accommodation does not offer settled accommodation for the homeless households that are occupying the properties. Whilst some households are able to stay in the same temporary accommodation property until they are permanently housed, many households have moved from one temporary accommodation property to another, mainly because of the following reasons:

i) the lease has expired
ii) the property is in disrepair and is being handed back to the owner
iii) the household size or needs have changed

3.5 Over the next two years, the leases on approximately 600 properties are due to expire. The council will be retendering its contract for the provision of short term temporary accommodation over the next 9 months and will need to consider whether there is need to replace the properties where leases are expiring. The overall demand for short term leasing supply will need to consider the following:

i) How the council intends to deliver the 2010 TA reduction target?
ii) How the council can support its homelessness prevention strategies to encourage private sector landlords to rent directly to tenants?
iii) The number of properties in disrepair which need to be handed back?
iv) Whether the council can provide alternative schemes which provide settled accommodation?
v) How the new contract will result in improved standards in property and housing management?
vi) The appetite from landlords to lease their properties if their lease rents do not increase?

Given the rate at which these leases expire, the council will need to ensure it has an adequate supply of suitable alternative accommodation to rehouse any homeless households where short term leases are expiring and the leases are renewed. Properties delivered from the Scheme will help to assist the council in meeting this demand.

3.6 The Council has received counsel's advice that accommodation provided through this Scheme would contribute to meeting the government's TA reduction targets. A copy of the counsel's advice is provided in Appendix L1. In particular, as the council is entering into a long term lease in respect of the Scheme, the accommodation is considered settled accommodation. Given this, the council would be able to offer the accommodation to the homeless applicant, to whom the council owes a housing duty, as alternative and suitable accommodation and this offer would be regarded as a "qualifying offer" if the homeless applicant accepts the offer of accommodation on a voluntary basis. Given this, the scheme presents a significant advantage over delivering short term leasing schemes and contributes to the council's wider Housing Strategy and TA reduction plans.

3.7 The Executive is asked to note that the delivery of the Scheme supports the council's delivery of the Brent Community Strategy (2006-2010)[2] and the

[2] Community Strategy 2006-2010

council's Corporate Strategy 2006-2010[3], both of which set priority for developing an inclusive community. In particular, the delivery of the Scheme will support the following objectives:

i) maintain the supply of affordable new housing and achieve our targets for reducing the use of temporary homes for families with children
ii) help to deliver a programme to bring more empty properties back into use
iii) allow the council to work with private landlords to provide high quality rented accommodation

3.8 The Corporate Strategy specifically sets objectives to improve Health and Well Being of the borough's residents. The benefits to the community of providing housing which meets the standards of accommodation and housing management services offered by the Scheme can be seen from the Government's "Background of the Decent Homes Standard" publication which said:

- *Too many live in poor-quality housing or find that their Landlord, private or public, does not provide a proper service*
- *Many live on estates which have been left to deteriorate for too long, and which contribute to ill-health, crime and poverty*
- *Many families and individuals, including elderly and vulnerable people, live in housing that is not energy efficient and in which it is difficult to keep warm*

The impact of these problems is as clear as the benefits of decent housing. There are strong associations between poor housing and poverty, deprivation, crime, educational under-achievement and ill-health. People are discriminated against in looking for work or using services because of where they live. Whole neighbourhoods suffer from neglect.

3.9 More specifically, the Scheme promotes and improves well being of the borough's residents as follows:

<u>Economic Considerations</u>

- Makes best use of public funding and investment in order to contribute towards the provision of longer term affordable housing in the longer term
- Provides a partnership approach towards delivering affordable homes across four authorities in order to achieve consistent approaches towards procurement, standards and quality,
- Improved procurement approach has resulted in a cross borough a risk sharing arrangement

<u>Social Considerations</u>

- Provision of good quality, well managed settled accommodation for homeless families
- Supports the delivery of our overall TA reduction plan and Local Area Agreement targets to reduce temporary accommodation usage
- Housing management provision will also be regulated by Tenants Service Authority providing an extra layer of comfort maintaining higher management standards and support provided to the residents.

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[3] Corporate Strategy 2006-2010

Environmental Considerations

- Contributes towards bringing empty properties back into use
- All properties will be Decent Homes Standards and comply with the property specification agreed with the council
- Properties acquired will need to be environmentally sustainable and meeting the requirements of the council and the HCA and TSA.

3.10 This report provides the Executive details on how the scheme was developed and the key changes that have been made to the scheme since the Executive gave their approval to award the contract to the Lloyds consortium in February 2008. The report sets out current scheme structure and revised outputs that are to be delivered and requests that the Executive re-confirm their previous decision to approve the award of contract for the procurement and supply of units of accommodation and the provision of management and maintenance services for Brent Council to the Special Purchase Vehicle now established by the Lloyds Consortium, namely London Housing Partnerships Limited (LHP) on the revised Scheme.

Development of the Scheme

3.11 During 2007 a major feasibility study was commissioned from Civis Consultants on temporary to permanent accommodation. The feasibility study[4] which was separately assessed by CLG economists came to the view that a "temp to perm" scheme would work. It particularly noted a number of cost benefits that arose from a sub regional scheme compared with boroughs acting individually, namely:

- Lower set up costs
- Cheaper loan finance
- More effective procurement
- Greater and earlier repayment of debt
- The potential for out of borough procurement for inner London boroughs with high property prices.

3.12 Following the publication of the feasibility study, the West London sub region decided to go ahead with an actual scheme. In autumn 2007, in compliance with EU Procurement requirements, an Invitation to Negotiate was issued. The proposal by a consortium of housing associations; a managing agent and Lloyds/TSB was selected as the preferred bidder and formal negotiations then commenced. A report recommending the award of contract to the special purpose vehicle to be established by LloydsTSB Consortium was agreed by the Executive on 11th February 2008.

3.13 Due to a number of outstanding contractual and operational issues at the time of the February Executive, Members gave delegated authority for the Director of Housing and Community Care to determine the exact terms of the various agreements that were needed to be entered into, in consultation with the Director of Finance and Corporate Resources and the Borough Solicitor, and in particular the following agreements:

(i) The overarching multi-party agreement with the other participating West London Boroughs which form the West London Housing Partnership; and

[4] Funded by a grant from the London Centre for Procurement Excellence.

(ii) The agreement specific to Brent Council (including the heads of terms of the lease agreement and the heads of terms of the facilities management agreement).

In addition, members authorised the Director of Housing and Community Care to agree a Sub Regional nominations protocol and form of agreement with the other participating West London Boroughs for the effective working of the Scheme.

Key Changes to the Scheme

3.14 Development of a Special Purpose Vehicle & Contractual Relationships

3.14.1 Initially the council approved the award of the contract to the special purpose vehicle to be established by the LloydsTSB Consortium, which initially comprised Lloyds TSB Bank, A2 Dominion Housing Group and Genesis Housing Group. The LloydsTSB Consortium also assumed that procurement would be sub contracted to Orchard and Shipman Limited, and Pathmeads Housing Association would provide the management services. Following discussions with the LloydsTSB Consortium and the local authorities, the structure of the special purpose vehicle evolved further. In particular, LloydsTSB as the senior lender decided that the special purpose vehicle would be a charitable trust, known as LHP. LHP would then sub contract the procurement and management services to be delivered by A2 Dominion, Pathmeads Housing Association and Orchard and Shipman Limited. Through mutual consent, and to manage the overall risk in delivering the project, LHP introduced Stadium Housing Association as an additional sub contractor. Stadium Housing Association was selected due to their local connections in providing housing and management services in the sub region. Stadium Housing Association had initially submitted a bid in its own right as part of the tendering exercise. The councils were satisfied as to Stadium Housing Association's economic and financial standing and to its technical and professional ability and agreed that it could join the LloydsTSB Consortium. A Scheme structure chart is provided in Appendix G1.

3.14.2 LHP has been registered as a company and has a board of Independent Board Trustees, who have been appointed by LloydsTSB. The LHP Board will ensure the Scheme is managed to the benefit of all parties and will include a representative from a local authority (who is not directly involved in the Scheme) who will able to attend and observe the LHP Board meetings. Details of the board membership are included in Appendix G2.

3.14.3 The contractual arrangements for the Scheme between the participating authorities are now directly with LHP and are managed by a series of agreements which have been progressed considerably over the past 12 months to reflect the new structures. The participating authorities have commissioned Winkworth Sherwoods LLP to review, prepare and advise on the project documentation and on the overall legal position of the Scheme in respect to participating authorities. Winkworth Sherwoods LLP have provided advice on the Scheme generally, a copy of which is attached as Appendix L2. In addition, The participating authorities commissioned BDO Stoy Hayward (BDO) to provide independent financial advice during the contract negotiations being held with LHP and to carry out a review of risks and a model audit of the financial model and statements that support the Scheme. A copy of their report assessing the scheme is provided in Appendix F1. The key project documents to which the council is a party are listed in Table 1.

Table 1 Key Contract Documents

Global Umbrella Agreement	This agreement is jointly entered into by all the participating authorities and LHP and sets out the basis on which the Scheme will be financially administered in order to meet the scheme servicing costs for the duration of the contract.
Council Umbrella Agreement	This agreement is entered into by the council and LHP. The agreement sets out the basis on which the council will enter into leasing agreements for properties which have been selected to be included within the Scheme.
Leasing Agreement	The lease for each of the properties sets out contractual landlord and tenant obligations for the council and LHP.
Facilities Management Agreement	The management services LHP provide in respect of the maintenance of the properties and management of the tenancies are set out in the Facilities Management Agreement each authority enters into with LHP.
Call option	The Call Option agreement allows LHP to consider the council's formal request to purchase the properties in the event an RSL cannot purchase the properties at the end of the term.
Inter-Borough Agreement	The Inter-Borough Agreement is entered into between the participating authorities and sets out the basis on which the boroughs will work collaboratively in delivering this Scheme, and includes provisions on any out of borough procurement and arrangements if one (or all) decide to withdraw from the Scheme.
Deed of Conversion	The Deed of Conversion is entered in to by the council and the RSL which has acquired properties in the borough and sets out the basis on which properties will be retained to be used as affordable housing on the expiry of the lease and how any surpluses that are generated from the Scheme can be used.
Nomination Agreement (for post conversion period)	The RSLs will also need to enter into a nomination agreement with each authority which secures nomination rights to properties after the lease expires.
Housing Management Deed of Covenant	This agreement entered into by the council and the RSL providing Facilities Management services, guarantees the RSL's performance to the council under the Downstairs Facilities Management Agreement.

3.14.4 There are a number of agreements to which the council, and participating authorities, will not directly be a party. However, these agreements have a significant impact on the way in which the Scheme is administered and operates. These agreements are as follows:

Table 2 LHP Agreement with sub contractors and funders

Downstairs Facilities Management Agreement	The Downstairs Facilities Management Agreement is between LHP and the RSLs and transfers LHP obligations (under the Council Facility Management Agreement) to provide property management and tenancy management services to their nominated RSLs.
Finance Agreement	The Finance Aagreement is between LloydsTSB and LHP and sets out the arrangement on the loan that LLoydsTSB are to provide LHP to purchase the properties for the Scheme.
Put option	This agreement is between LHP and the RSLs and allows LHP to put to the RSLs the option to purchase the properties at the end of the lease.
Grant agreement and form of charge	This agreement is between the Homes and Communities Agency and LHP and sets out the basis on which social housing grant is being provided to support the Scheme.

Whilst the documents listed In Table 1 above are the main Scheme documents, this list is not comprehensive.

3.15 Changes to Funding Structure

3.15.1 The progress in delivering the Scheme was delayed because of the time that has been taken on finalising the contractual agreements that could be supported by the Scheme structure that had been evolving further since the Executive gave its approval to award the contract in February 2008. The most significant change was that the Scheme had to be restructured to allow for proposed changes to the rent regime for temporary accommodation. The original proposal was based on the boroughs being able to apply the Housing Benefit Cap regime for local authority non-HRA leased accommodation (which was also known as the Private Sector Leasing Housing Benefit (“PSL HB”) subsidy regime). However, the Department of Work and Pensions announced a change in that regime to a rent structure for temporary accommodation based on Local Housing Allowances which are lower than the HB Cap regime and more variable. It is expected that the regime for temporary accommodation will be more generous than the basic LHA level but as no final decision has been made it was decided to remodel the Scheme on basic LHA being applicable once the councils were no longer able to apply the PSL HB subsidy regime.

3.15.2 The decision to remodel the Scheme resulted in the authorities requesting further funding support from the Department of Communities and Local Government and the Housing Corporation in June 2008 to allow the Scheme to be remodelled on an LHA model through the injection of capital grant. The original Scheme assumed the £10m funding allocated to deliver the pilot from the Mayor’s Targeted Funding Stream and the Housing Corporation would be allocated via the RSLs. Due to the change in contractual relationships, LHP required the Housing Corporation, who was administering the grant payments, to pay the grant directly to them. However the Housing Corporation could only pay grant to accredited bodies who had a legal interest in the properties. As LHP was not accredited, it was unable to take up the Settled Homes Funding that was originally allocated. However, LHP did submit a further bid on the basis that they would be allowed to submit a bid to register as an accredited partner on the remodelled Scheme. LHP then submitted a bid for £54.5m in respect of the Scheme under a regular market engagement bidding round, which was accepted by the Housing Corporation. In addition, a subsequent bid for £10m was submitted by the councils for funding under Round 2 of the Mayor's Targeted Funding Stream, however an announcement on the outcome of the bids is still due to be given. Following informal discussions with the GLA, the council does not consider that this bid will be successful due to the amount of grant funding initially agreed by the Housing Corporation and now being administered by the Homes and Communities Agency.

3.15.3 The Homes and Communities Agency (HCA)[5] is now considering LHP's formal accreditation so that it will be able to draw down social housing grant once financial close is achieved and LHP is in contract with the participating authorities.

3.16 Withdrawal of Local Authorities from Project

3.16.1 Following the decision to award the contract for the Scheme last year, a number of West London Authorities have withdrawn from the Scheme. Authorities withdrawing are the London Borough of Ealing, the London Borough of Hammersmith and Fulham and the Royal Borough of Kensington and Chelsea.

3.16.2 Initially, the London Borough of Ealing required 200 properties from the project. However, in April 2008 the London Borough of Ealing decided to withdraw from the Scheme because inter alia they could not fully commit to the Scheme at the time when LHP were submitting a bid for revised grant funding. The London Borough of Ealing had already committed to deliver a large programme of temporary to permanent schemes with an organisation called Safe Haven and was carrying out a review of the Scheme viability during this time, and decided that they could not manage the overall exposure to risks in delivering two temporary to permanent schemes.

3.16.3 The Royal Borough of Kensington and Chelsea (RBKC) initially required 200 properties from the Scheme, however this reduced to 100 as the majority of their procurement was envisaged to be from out of borough supply. However, in November 2008, RBKC withdrew from the Scheme as amongst other things they were unable to deliver this Scheme on the basis it would allow them to discharge their housing duty to homeless households nominated to these properties. Given this, the Scheme would not contribute towards delivering their temporary accommodation reduction targets. Their officers considered that any offers of accommodation made to properties located out of borough

[5] The Homes and Communities Agency (HCA) is a new organisation established on 1 December 2008 to replace the investment functions of the Housing Corporation. The Housing Corporation was previously responsible for overseeing the regulation and governance of Registered Social Landlords and was the central government agency responsible for investment into new affordable housing.

would not be considered as being suitable offers of accommodation and would result in further legal challenges being received on any decisions made not to accept a homelessness application or to discharge an existing duty to provide rehousing. Given that in these circumstances, the accommodation would not contribute to the overall use of temporary accommodation, their preference was to support shorter term temporary accommodation schemes which allowed them greater flexibility as needs and demand changed.

3.16.4 The London Borough of Hammersmith and Fulham (LBHF) withdrew from the Scheme in February 2009, after a series of discussions with remaining participating authorities. Initially, LBHF required 200 properties to be delivered from the Scheme however, like RBKC, they envisaged the majority of the properties to be located out of borough. Like RBKC, their overall quota was reduced to 100 properties as other participating authorities considered the overall impact on their authority from the provision of out of borough supply.

3.16.5 LBHF formed the view that they would be able to participate in the Scheme and operate the Scheme as a discharge scheme as they are unable to source suitable accommodation in their borough. However, in terms of the overall housing mix, LBHF required participating authorities to allow them to procure larger family housing units in their boroughs if the overall number of housing units were to be reduced. Given the downturn in the current property market, officers in the participating boroughs considered that in borough procurement in LBHF was now more viable than was previously envisaged, and that LBHF would need to consider some in borough procurement. However, LBHF did not want to commit to procuring smaller properties in borough and therefore stood by their decision to seek out of borough acquisitions. Primarily as agreement could not be reached from the participating authorities on the final quota to be allocated to LBHF, a decision was made by LBHF to withdraw from the Scheme, so that the Scheme negotiations and financial model could be finalised in order for boroughs to reach financial close.

3.17 <u>Changes to the outputs</u>

3.17.1 Since the original tender negotiations there have been a number of changes to the Scheme. There has been a decrease in the size of the Scheme from 1400 units to 861 units by the withdrawal of the LB Ealing, RBKC, and LBHF. There are no adverse implications or increased risk to the financial mechanism underpinning this Scheme, as it becomes financially viable at 400 units.

3.17.2 Tables 3 and 4 set out the revised Scheme outputs. The council’s contribution accounts for 37% of the overall procurement programme and has been determined partly on the overall level of need that the council has for longer term affordable housing supply and on overall viability when considering acquisition costs against yield levels that can be achieved in the borough. Whilst 65% of the overall procurement programme is for the 2 bedroom accommodation, the percentage of 2 bedroom accommodation in Brent accounts for 75% of its overall supply requirements. The reason for this is because the number of homeless households in Brent that require two bedroom accommodation represents over 36% of the overall total. In addition, the number of homeless households occupying one bedroom accommodation account for 25% of the overall total, and given this ensuring the future supply of two bedroom accommodation will also assist in help to rehouse some of these family as their household size increase.

Table 3 Scheme Outputs

Borough	Total Number of Units (Feb 2008)	Total Number. of Units (April 2009)
Brent	300	320
Ealing	200	0
Hammersmith and Fulham	200	0
Harrow	100	111
Hillingdon	200	219
Hounslow	200	211
Kensington and Chelsea	200	0
Total	1,400	861

Table 4 Unit Mix Breakdown

Borough	1bed	2bed	3bed	4bed	total
Brent	0	241	74	5	320
Ealing	0	0	0	0	0
Hammersmith and Fulham	0	0	0	0	0
Harrow	10	50	41	10	111
Hillingdon	16	142	52	9	219
Hounslow	0	130	72	9	211
Kensington and Chelsea	0	0	0	0	0
Total	26	563	239	33	861

Overview of the Revised Scheme

3.18 As detailed in paragraph 3.14.1, the LloydsTSB Consortium has set up LHP, which is a special purpose vehicle created for the Scheme as a registered charity (so that it can remain a non profit making organisation). In summary,

i) LHP finance the acquisition of properties using loan finance of approximately £150m secured from Lloyds TSB.

ii) LHP will receive £54.5m grant funding from HCA to contribute to acquisition and works costs for these properties.

iv) The properties will be leased to the authorities for a fixed period (estimated at 16 years and six months).

v) The RSLs in the LloydsTSB Consortium will procure the properties and deliver management and maintenance services under sub contract to LHP, and purchase the available properties at the end of the lease period.

vi) During the lease the council will allocate the properties to homeless households and grant a non secure tenancy.

vii) At the end of the period the plan is to convert as many properties as possible to permanent accommodation with a mix of target rents and intermediate rents under a separate nomination agreement with the landlord who owns the properties at the end of the lease.

viii) Estimates based on a range of assumptions indicate that a conversion rate of 88% for the Brent properties could be achieved with the remainder of the properties having to be sold to finance the conversion.

3.19 There are several elements of the Scheme, which include the following:

i) The Funding Structure
ii) Financial Model and Viability
iii) Procurement and Provision of Property and Housing Management Services
iv) Exit and Termination Arrangements
v) Conversion Arrangements at the end of the Lease

3.20 <u>The Funding Structure</u>

Private Finance Arrangements

3.20.1 A loan facility will be provided by Lloyds TSB which will allow LHP to commence procurement of the properties once financial close is achieved and the participating authorities are in a position to enter into the contract with LHP. The amount of private finances secured by LHP and the Heads of Terms for the loan agreement are provided in Appendix F2. The key aspects of the Heads of Terms are as follows:

i) BDO have advised that the margin on the loan is considered comparable to funding offers in the current PFI market and represents the difficulties in securing private finance in the current lending markets.

ii) The loan repayment term is 16.5 years. LHP will have working capital facilities available during the procurement phase so that they can acquire the properties.

iii) The loan agreement requires an interest rate and hedging strategy as set out in the next section to be implemented by LHP as part of the loan conditions.

iv) LloydsTSB will have the right to cancel the interest rate agreement which fixes the rate of interest which deals with the conversion of the properties. During the lease rental period the rate of interest has been reduced on the basis that RSLs who acquire the properties will take out a loan over a 40 year period at a fixed interest rate. Whilst LloydsTSB reserves the right to change the interest rate at the expiry of the lease, the participating authorities can benefit from the lower interest rate during the lease period, and the subsequent purchaser (either the RSL under the Put Option) or the council or its nominated body (under the Call Option) will be able to consider alternative lending terms if the interest rates are uncompetitive at that time.

v) There are penalties on early repayment of the loan as follows:

Years 1-3	3%
Years 4	2%
Years 5	1%

In the event of early termination, the terminating authority will in effect pay these early redemption penalties.

vi) LloydsTSB has set an arrangement fee which BDO has advised is competitive in the current market.

vii) LloydTSB are to apply management and agency fees which are required to administer and review the loan repayments and manage the overall cash flow within the scheme.

viii) LloysdTSB has required a charge over the Cash Reserve Account (the operation of which is discussed further below) and is not unexpected given the amount of the loan that is being provided.

ix) LloydsTSB will also have rights to “step in” and take over the management of the Scheme, however these powers are restricted to the following situations:

- 1 or more RSLs are unable to comply with their obligations if the Put option is exercised
- Where the bank considers that participating authorities will not be able to satisfy the conditions of Call Options
- Where LHP’s business plan indicates it will be in breach of its loan obligations
- Where LHP is not taking action to improve the performance of its sub contractors.

Social Housing Grant

3.20.2 The HCA has also allocated grant of £54.5M to LHP, subject to agreeing the grant terms, in order to reduce the capital costs and therefore the subsequent lease rental charge for the authorities. At the request of the HCA, a draft grant agreement is being prepared by LHP’s RSL sub contractors, as LHP’s legal advisors on this project, Trowers and Hamlin, are also the HCA advisors on grant agreements. The HCA has confirmed its approval for the RSLs to lead on drafting the grant agreement, using the RSLs nominated legal advisors (Devonshires) to ensure that the grant agreement properly reflects the Scheme objectives, administration and outputs. Although the participating authorities are not directly a party to the grant agreement, LHP has invited the participating authorities to comment on the draft grant agreement in advance of their discussions with the HCA to ensure that the local authority views are properly taken on board.

3.20.3 The grant agreement that is being proposed to be adopted is generally in standard form which has been issued by the HCA previously in respect of Settled Homes Initiative and Temporary Social Housing Grant funded schemes. However, in terms of assisting the HCA in finalising the grant agreement, LHP shared with HCA the latest business plan requiring £54.5m grant and discussed the changes which have happened as part of the Scheme dynamics and the financial environment the Scheme is currently exposed to and its effect on the business plan. It has been agreed that HCA’s analysis of the Scheme and grant application would be undertaken primarily prior to the submission being placed on the system to ensure a speedy process post submission. LHP are engaging with KPMG to validate the business plan as submitted to the HCA.

3.20.4 LHP have discussed the timetable to submission and the HCA has indicated that LHP Accreditation would be finalised by 13 March and that LHP will be able to submit their bid for funding in the week ending 27 March to allow the HCA to process the bid in April 2009. In finalising the grant agreement, LHP are in discussions with HCA on the following:

i) the specific mechanics to draw down grant
ii) the HCA requirements for certification that the properties comply with the grant conditions
iii) the mechanics to recycle the grant within the Scheme to support Scheme end conversion rather than claw back grant due to early exiting from the Scheme.
iv) The ability to transfer grant to an RSL at the end of the Scheme.

Cash Reserve Mechanism

3.20.5 LHP and the authorities have agreed to develop a rent pooling mechanism which helps to manage deficits that may arise from the scheme funding arrangements. This mechanism is called the Cash Reserve Mechanism (CRM) and the intention is the mechanism allows LHP to hold any rental income received that is not needed to meet finance and operating costs in that financial year in a Cash Reserve Account (CRA). The CRA will then be used to provide a buffer for councils in smoothing the cost of the Scheme in order to reduce or defer the amount or timing of any deficit that may occur. The CRA operates across the schemes as a whole, allowing all the authorities with deficits to access surpluses across the whole scheme rather than solely surpluses generated from their own properties. Given this, the operation of the CRM is a key feature sharing the liabilities and risks of delivering the scheme and the benefits of the Scheme. In particular, the CRA will help the authorities with the following:

i) provide assistance to meet the overspends in the scheme operating costs
ii) assist authorities manage any deficits between the Scheme Service Rents and the actual rents that can be recovered from the tenants' rent chargets
iii) allow the balances at the end of the lease period to maximise the rate of conversion to permanent homes.

3.20.6 To understand the way in which the CRM works, it is necessary to understand what income is paid to LHP. For each property acquired under the Scheme, the council rent obligation under the lease is to pay the higher of

i) The rent charged to the tenant (less the Facilities Management fee due to LHP's sub contractors)
ii) The Scheme servicing rent

3.20.7 The rent charged to the tenants will be initially set at a level in line with the borough's rent setting for PSL properties, which currently charges rents at the same rate that is applicable under the housing benefit subsidy thresholds for non HRA leased accommodation. The Department of Work and Pensions (DWP) plans to base housing benefit subsidy for Private Sector Leasing schemes on Local Housing Allowance (LHA) rates from 2010/11. The mechanism proposed is 90% of Local Housing Allowance rates (plus a management fee allowance[6]). Given this, from 2010/11 the rent levels applicable to tenants occupying properties leased under this Scheme will be set within the new rent regime.

3.20.8 The Scheme servicing rent (SSR) is primarily associated with LHP's finance costs required to support the loan used to procure the properties, but also covers LHP management costs. The SSR for a property will be set by LHP at the minimum rent required to cover its bank loan and operating costs, of which the funding costs reflect 95% of SSR. The SSR will be determined at the point a property is acquired under the Scheme and takes into account LHP's overall hedging structure. LHP will ensure that the SSR will be no more than 93% of the LHA rent that is applicable at the point of acquisition. Given this, LHP will have set a ceiling on the maximum total costs of purchasing the property and the subsequent financing costs that will be needed to fund the acquisition costs.

3.20.9 Once the property is acquired SSR will be increased annually by RPI + 0.5%, and the council will be required to pay LHP the higher of the rent charged to the tenant or the indexed SSR. In order to manage any surpluses or deficits that are generated, any surplus income received by LHP above the SSR is paid into the CRA. LHP can then call upon the CRA to meet any additional financing and operating costs that are incurred in managing their loan obligations (which would normally be borne by applying an increase in the SSR) to assist participating boroughs to manage shortfalls where the SSR is higher then rent the council is able to charge the tenants. Any of the participating councils may call on the CRA where the SSR is higher than the rent it is able to charge its tenants. There is a control mechanism which prevents councils from calling upon the CRA where call upon the CRA is higher than 25% of the overall CRA balance, at which point the participating councils would review the overall Scheme and agree the basis on which to fund the Scheme deficits. At all times, the CRA must hold a surplus of £50,000.

3.20.10 The CRA will work on a first come first served basis as deficits arise. If the CRA has been exhausted, then if the Council is a deficit authority it would need to fund the full amount of a deficit that may arise on a property for that year. If deficits in a given year are less than 25% of the balance of the CRA then the deficits are automatically cleared. If deficits are greater than 25%, use of the CRA will be by agreement of the four authorities to allow for the use of the CRA to be rationed in order to protect the viability of the overall scheme.

3.21 Financial Model and Viability

3.21.1 BDO has reviewed the financial model and financing structure supporting the Scheme. The final financial model will still be subject to sign off from LHP's auditor's KPMG and from LloydsTSB. This process will identify whether there are any calculation errors in the model. The participating authorities will

[6] The management fee allowance is currently envisaged to be £40 per week.

require a statement from KPMG to confirm the model has been audited and the financial model is free from material errors.

3.21.2 BDO has considered the operation of the Scheme and risk transfer between the participating authorities and LHP. A copy of the report on their findings is attached in Appendix F1. LHP's financial structure is based on LHP making the minimum charge necessary to cover its third party, finance and internal operating costs. The council and participating authorities are contracting to make two payments

i) A charge for housing and facilities management services (the FM charge)
ii) The lease rent, which covers LHP's financing and operating costs

3.21.3 The council needs to pay the FM costs and SSR from the rents that it charges the tenants and any shortfalls in the lease rents are to be met by the authority if the cash reserve mechanism is not able to cover these. The model assumes that the lease rent and the FM charge will increase by RPI+0.5%. The lease rent is initially set at a level which is 7% below current LHA levels. This allows the councils to build up a buffer in the CRA and this increases if property prices fall further and LHA rents increase more than anticipated. Although LHA levels are influenced by the dynamics of the local housing rental markets, the general trend in rental level movements is modelled on the basis that rents will follow an increase on the basis of RPI+0.5% for the duration of the lease. This approach to modelling rent increases is on the same basis as being applied to the Housing and Social Care Non HRA PFI scheme and other temporary to permanent schemes the council is currently negotiating with Brent Housing Partnership. Whilst it is possible that rents do not increase in line with these levels, resulting in a deficit between the tenant's rent charge and SSR, the CRA has been introduced to assist participating authorities in meeting these shortfalls.

3.21.4 The CRA will also be used to cover any unexpected overspends in LHP operating costs and will also be used to reduce LHP's overall debt at the end of the lease period in order to minimise the number of properties that need to be disposed of at that time. As LHP has entered into fixed price contracts (95% of its operating costs, including maintenance and management services) and entered into long term hedging instruments to manage interest and inflation risks, BDO consider a very limited risk of cost over-runs requiring a call on the CRA. However, the model does not allow for any cost overruns if a new subcontractor is selected by LHP if an existing sub contractor has had to be replaced from outside their Consortium.

3.21.5 In terms of rent collection the model assumes that this risk is managed by the sub contractors as they are guaranteeing 100% rent collection after pricing the cost of this within their management fee. In terms of voids risks, the council is required to underwrite rent loss for anywhere a tenancy cannot start within 10 days of receiving a nomination providing a property is available for letting. The undertaking to meet rent loss for delaying in providing is applied within existing temporary accommodation contracts and the council's PFI scheme. Any costs arising from voids which are not ready to let will need to be borne by LHP's sub contractors. As this accommodation is intended to provide settled accommodation, it is anticipated the number of voids during the lease term would be on average limited to two occasions. Given this, on average the council would anticipate around 38 voids being created each year.

However, if this level is exceeded, the council will need to meet any additional costs incurred by the sub contractors in re-servicing the properties and loss of rental income. This would be funded from the budgetary provisions that would be set aside within the Temporary Accommodation budget as detailed in Appendix F6.

3.21.6 As part of the funding strategy LHP has employed a hedging instrument which eliminates their exposure to interest rate and inflation rate movements, essentially ensuring that their cost of borrowings cannot exceed the available cashflow. LHP has fixed the rate of inflation which it applies to its rent income and expenses in order to ensure it can accurately predict its future cash flows, and LHP has then borrowed on a fixed rate over 15 years to make the maximum use of the predictable cashflows to raise the debt for the property acquisitions. BDO consider that the hedging strategy is reasonable and effective in terms of managing LHP's financial risks. However, whilst the hedging strategy is appropriate to protect the council and LHP's interest in managing cashflows, Members should note that exiting from these arrangements will result in significant breakage costs.

3.21.7 In order to protect the council's interests and minimise the overall risk exposure, it has agreed with the participating authorities and LHP to review the Scheme viability once 400 units have been purchased. If projections show that the CRA will be exhausted within five years then the authorities can require that procurement will cease. The scenarios indicating rapid exhaustion of the CRA are likely to be that LHA is reducing significantly across a majority of the broad market areas or significant detrimental changes to the LHA regime have been announced. Procurement would also cease if the procurement teams are unable to procure suitable properties in accordance with the procurement plan or they are unable to procure within the agreed headroom.

3.22 Procurement and Provision of Property and Housing Management Services

3.22.1 The property specification and procurement programme has been agreed by participating authorities. The council has the right to veto up to 5 properties per 100 properties that are presented by LHP and there are also set rejection criteria which prohibit the acquisition of properties in the following circumstances:

i) properties which are located within pre-defined regeneration areas
ii) properties which do not meet pre-defined room sizes
iii) the level of non-compliance with the suitable unit criteria is unacceptable[7]

3.22.2 In addition to the restrictions, the council will ensure the procurement programme in Brent complies with limitations that are applied to existing temporary accommodation contracts, such as:

- excluding properties along the North Circular Road
- excluding properties over shops (where they are considered unsuitable)
- properties with side alley entrances
- properties with unconventional bedroom configuration

[7] Properties may be accepted for acquisition where following a programme of works to be carried out they are deemed to meet the property specification. There may also be specific circumstances that the Council may accept a property which does not meet the full property specification but is considered habitable and suitable for meeting an identified housing need.

3.22.3 The Council Umbrella Agreement and Lease Agreement set out the basis on which properties will be acquired under the project. The leasing agreement is a tenant repairing lease for 16.5 years and sets out obligations during the period when the properties are to be rented at market rented levels before they can be converted to permanent affordable accommodation.

3.22.4 The property management and housing services that LHP are contracted to provide to the council are set out in the Facilities Management Agreement. LHP have sub-contracted their obligations arising from the Facilites Management agreement to the participating RSLs and Orchard and Shipman, under a Downstairs Facilities Management agreement. The management services include rent collection, repairs and maintenance. In particular the council's repairing obligations under the lease are transferred to LHP who then sub contract these responsibilities to the RSLs. In particular, the subcontracting RSLs will need to ensure that the properties are maintained for the duration of the lease and ensure that a programme of cyclical and major works is carried out so that the properties do not become dilapidated during the lease term. Their performance in this respect will also be assessed by the HCA and TSA in order to comply with the grant conditions that LHP has entered into and the covenants set by LloydsTSB in respect of the loan. The RSLs will enter into a Facilities Management Deed of Covenant with the council to ensure the councils can take action against the RSLs if they fail to perform adequately.

3.22.5 The Facilities Management Agreement and Downstairs Facilities Management Agreement also set out the basis on which the council can make nominations to the properties. A further nomination agreement will need to be entered into with the registered landlord who acquires the properties under the Put Option or the Call Option at the expiry of the lease.

3.23 Exit and Termination Arrangements

3.23.1 The termination arrangements are in place to protect the overall Scheme viability in the event the council, other participating authorities and LHP decide they do not wish to proceed with the Scheme during the lease term .

3.23.2 An individual authority has the ability, in certain circumstances, and subject to the agreement of LHP, to terminate its lease agreement with LHP. However, any authority that decides to terminate its lease will need to meet any breakage costs incurred by LHP in order to leave the Scheme viable for the remaining authorities who are continuing to participate in the Scheme.

3.23.3 The most significant termination costs will arise in breaking LHP's financing agreements and hedging instruments. LloydsTSB have indicated that the hedging instruments that support the loan to LHP follow a market standard agreement, which means that LHP will receive or bear the full credit or debit of any break that is executed. At the point of termination, the cost to LHP, or benefit, of breaking the "swap" will be determined based upon the difference between the actual and forecast interest and inflation rates over the period of the lease between the point the "swap" was entered into and the point of breakage. If interest/inflation rates have moved against LHP, there will be a payment to exit the "swaps", conversely if rates have moved in LHP's favour it will receive funds from exiting. LHP's commercial position is that these costs will be passed on to the Authority in full without any deductions for any benefit that may arise when determining the overall net termination cost to the authority.

3.23.4 The actual cost or benefit from breaking the “swap” can only be determined at the point of termination and therefore BDO has not be able to comment on the exact impact based on actual exit costs. LHP has provided indicative costs based on specific interest rate scenarios and BDO have considered these in their report in section 4.4.3 in Appendix F1. Breakage costs increase when inflation reduces and interest rates reduce.

3.23.5 Whilst the examples in Appendix F1 provide an indicative assessment of costs, Members should note that a limitation on these costs cannot be agreed by LHP. In addition to the costs of breaking the hedging instruments, costs of termination include:

i) Costs of selling the properties
ii) Sub contractor breakage costs
iii) Dilapidations
iv) Interest costs during the period a property is being marketed for sale
v) Repayment of any grant

3.23.6 Whilst growth in capital values in the later part of the leasing term may assist in covering costs of termination, authorities which are deciding to exit from the Scheme will need to assess whether the costs of exiting the Scheme outweigh the costs of remaining in the Scheme (especially where the authority is required to maintain Scheme deficit payments that cannot be supported by the CRA).

3.24 Conversion Arrangements at the end of the Lease

3.24.1 At the end of the lease, it is the intention that the subcontractor RSLs will acquire the properties from LHP on the basis that the conversions to social housing can be optimised to ensure that conversion reflects the council’s housing needs at that time. The RSLs cannot be contractually bound to purchase the properties at this stage, as this would affect their borrowing capacity for the duration of the lease and would impact on the delivery of their other activities (as the properties and future debt funding requirement would be included on their balance sheets). Under the proposed structure, LHP have a contractual requirement with the RSLs which offers them rights of pre-emption if LHP decides to exercise a Put Option to sell the properties on the open market. If LHP fails to offer the Put Option and the RSLs cannot take up their rights for pre-emption, the council has a Call Option which requires LHP to sell the properties to a nominated social landlord on the same terms that would have been offered under a Put Option. This arrangement protects the council’s ability to retain the properties as affordable housing.

3.24.2 LHP will transfer its portfolio of properties to the RSLs at the value of the outstanding debt (after deducting the value of CRA and a contribution of £4k per property from each of the RSLs). It is anticipated that the RSLs cannot support the acquisition of 100% of the properties under a target rent mechanism, and that some of the properties may need to be disposed of or let at intermediate rents.

3.24.3 The conversion rate is affected by the following:

i) The affordable rent regime adopted by the RSLs at the expiry of the lease;
ii) The RSL's operating costs which will determine the rental values to support a loan to acquire the properties;
iii) House price inflation to ensure any increases in the value of units will minimise the number of properties that need to be disposed of.

3.24.4 Based on current target rents increasing on average by 2.5% inflation over the lease term and annual house price inflation increasing at around 4% per year on average over the lease term, it assumed that approximately 88% of the portfolio in Brent could be converted at the end of the lease. A comparison of conversion rates across the 861 units is provided in Appendix F3.

3.25 Finalising Negotiations

3.25.1 Officers have carefully assessed the benefits and risks associated with participating in the Scheme after a series of lengthy negotiations with LHP, the HCA and the remaining participating authorities. LHP are now facing considerable time pressure in securing their loan offer from LloydsTSB and grant allocation of £54.5m unless the remaining participating authorities are able to reach financial close by the end of April 2009 or shortly thereafter.

3.25.2 The benefits of participating in the Scheme include

i) The provision of high quality temporary accommodation which will help the council meet its 2010 target from the CLG.
ii) The provision of larger units of permanent supply which is difficult to achieve through traditional funding mechanisms.
iii) The delivery of longer term permanent housing through lower levels of grant than are required for mainstream developments and without needing any capital investment from the councils.
iv) The ability to count delivery of these units against delivering the Mayor's Affordable Housing targets.
v) The delivery of the Scheme through a joint working mechanism which has resulted in bringing lower costs and efficiencies and the pooling of risk through the CRA.

3.25.3 Officers have also considered the risks of participating in the Scheme. A detailed risk register is provided in Appendix G3. Some of the risks are discussed further.

3.25.4 Impact on changes to LHA regimes

The modelling cannot factor in governmental or other negative changes to the LHA regime in the future or a shortfall between the rent that can be supported by the LHA rent regime and the Scheme Servicing Rent. In order to mitigate this risk a pooled cash reserve mechanism (CRM) has been introduced. This would enable the subsidy of authorities (and indeed individual properties) should the lease rental exceed LHA at any time in the future. In particular, the modelling has allowed for 7% headroom to be built. Early indications from LHP suggest that the headroom between the initial SSR and LHA will be greater than 7% if current conditions prevail during the acquisition phase. This is a result of both property prices and interest rates falling. Until the LHA rent regime is introduced the scheme will be structured on the PSL rent regime generating. Appendix F5 provides a model which shows the impact on the CRA if the Scheme is modelled under the PSL rent regime.

3.25.5 Insufficient surpluses are being generated in the CRA to meet longer term commitments.

In order to further mitigate this risk agreement has been reached on a review of procurement after 400 properties have been purchased. If at this early stage in the procurement it has become apparent that SSR will exceed LHA to the extent that the CRA will be exhausted within 5 years, or it is not possible to procure within the procurement plan or agreed headroom, then procurement can be stopped. 400 is the number of units considered necessary for the Scheme to be viable. Any additional costs of meeting the scheme servicing costs will be met from the CRA and offset against any headroom that has been generated.

3.25.6 Managing Exit Costs

Exit costs are predicted to be very high in the first few years of the Scheme and cannot be tied down in any way as they are dependent on moves in interest rates and inflation over the lifetime of the deal. This is a result of the financial hedging that will be used as part of the financing arrangements and breaking these deals potentially incurs considerable cost. Modelling by Lloyds TSB indicates that after the first few years of the Scheme the exit costs may be offset by increases in the property prices and in some scenarios breakage can generate a payment to LHP rather than a cost. Section 4.4.3 of the BDO report in Appendix F1 details the implications and costs of exiting the scheme.

3.25.7 Managing Council's Operating Costs

A provision has been set aside which allows the council to retain a small amount of the tenants rental income to meet its operational costs. This amount the council is currently set at 15% of the management fee payable to the RSL. The amount of rent that can be retained by the council is indexed by RPI and will be affected by the rate at which VAT can be charged for by LHP for the management services that are being provided to the council. Appendix F6 models these provisions which will be used to build up a bad debt provision and operational budget to manage these schemes during the contract term. In addition, as the Scheme is intended to replace short term leasing schemes, the expenditure that would normally be incurred by the council for nomination fees payable to housing associations would be used to service the costs of this Scheme. These provisions are also detailed in Appendix F6.

3.25.8 Homeless Demand reduces

Whilst overall number of homeless approaches is reducing due to the council's successful homeless prevention strategies, the council still has the fourth highest number of homeless households in London. The council's TA reduction target assumes the council will have 2,300 temporary accommodation properties in management by March 2010. As the Scheme properties provide the flexibility to use as Temporary Accommodation or private sector rented accommodation under a discharge scheme, then the council will be able to let these properties given the overall level of housing need in the borough. More importantly the council will need to still reduce the number of short term leasing properties it has in management because they do not generate affordable housing in the longer term. If properties become difficult to let then LHP have agreed to letting to non-charitable tenants in specific circumstances where properties are hard to let.

3.25.9 Managing Voids and Rent Loss

As the RSL are guaranteeing 100% rent collection in respect of the tenancy rents, the council need to ensure that they are able to nominate households within 10 days of the property being referred to the council. The property needs to be ready to let so the tenancy can commence within a10 day period. If there is a delay in a tenant signing up a new tenancy then the council is liable for the rent loss. If the property is not available for letting due to outstanding repairs which fail to meet the property standards, the council will not be liable for any rent loss for the period the property is not available for letting.

3.25.10 There is no guaranteed conversion rate

The Scheme has no guaranteed conversion rate to target rents, but seeks to optimise conversion at the end of the lease period. The modelling suggests that a substantial proportion, c80%, of the properties will be converted at the end of the lease period. The conversion rate is dependent on a range of market variables and different scenarios are attached at Appendix F3 If property prices stagnate over a long period of time then the conversion rates would be lower than predicted.

3.25.11 Availability of properties

There is a risk that the current state of the housing market will lead to difficulties in procuring properties because there are too few on the market that meet the requirements of the Scheme. This carries the risk that costs go up because costs are spread between fewer properties. We have agreed that increasing costs because of procurement difficulties will not be borne by the councils. A report on the London residential market is attached in Appendix G4.

3.25.12 Obtaining a waiver to keep properties outside the Housing Revenue Account

The councils are waiting for a final decision from CLG as to whether the Scheme is outside of the HRA. If the Scheme sits within the HRA we will need a waiver as the leases are over 10 years. CLG have undertaken either to confirm that the Scheme sits outside of the HRA or to issue a waiver. CLG are currently consulting on the provision of the Waiver and the consultation period ends on 1 May 2009. Appendix L3 provides further details on this.

3.26 Performance issues

3.26.1 The Scheme as developed requires all aspects of property management to be outsourced to a provider within the LloydsTSB Consortium. A formalised and detailed Facilities Management Agreement has been developed based on existing best practice. This agreement contains a range of strict performance indicators which will enable the participating boroughs to monitor performance and, if necessary, require a change of provider. Discussions are under way with other participating boroughs to explore the feasibility of sharing a resource during the procurement phase and beyond, to monitor the provider in a proactive way. Procurement of the units will also require each borough to undertake a re-profiling exercise with respect to their existing temporary accommodation portfolio. This may require the accelerated handback of existing property within the portfolio and some extra staffing resources may be required to accomplish this.

3.26.2 As part of the contractual monitoring requirement the council will monitor the LHP and their subcontractor to ensure that the contractor meets and exceeds the council's expectations, with particular focus being given on

i) Compliance in supplying properties that meet the specification and that the standards are maintained during the life of the contract.

ii) A first visit is carried out in respect of each new tenant and thereafter on a quarterly cycle.

iii) LHP carry out an annual Tenancy Survey

iv) Ensuring that LHP pay 100% of the rent payable by the tenant to the council

v) LHP to pay rent to the council during the re-let void period where property is unavailable for letting.

vi) Ensuring that LHP provide monthly management reports covering performance on:

- Repairs
- Average relet period
- Complaints responses
- Tenant satisfaction anti-social behaviour/racial harassment incidents
- Visits

3.27 **Finalising Contract Documentation**

3.27.1 Although the Scheme documentation is still under negotiation with LHP, major aspects of the Scheme have been agreed. Officers have appraised the Scheme and consider that the contract is structured in such a way that a sufficient level of permanent housing from the dwellings being leased to the council will result at the end of the 16.5 year lease period, so as to justify payments being made by the council. In addition, officers are satisfied that the dwellings available for permanent accommodation would go into the ownership of the participating Registered Social Landlords, or in default of that, to Registered Social Landlords nominated by the Authority under a call option and that call option has no adverse accounting or financial consequences on the Authority. The introduction of a break clause where the council can terminate the procurement arrangements after 400 properties has been secured for leasing by the participating authorities without disproportionate financial consequences. The Facilities Management Agreement with LHP provides that comprehensive transfer of risk to LHP is adequately underwritten by the RSLs through the downstairs Facilities Management Agreement and associated covenant from the RSLs to the council, which enables the council to ensure that its tenants will be properly managed with remedies for non-performance at no additional costs to the council.

3.27.2 BDO has issued their report on their assessment of the Scheme structure and project documents. Officers will refer BDO opinion on the Scheme and accounting treatment (see Appendix F4) to the council's external auditors for their views and have obtained a further legal report to confirm conformity with Counsel's initial advice. A further opinion from Counsel has been sought which considers the final Scheme and the authority the council has to enter into contract with LHP (see Appendix L4).

3.27.3 Given this, Members are asked to approve the award of contract for the procurement and supply of 320 units of accommodation and the associated provision of management and maintenance services for the council to LHP.

Members are asked to agree to the award of contract for the procurement and supply of units of accommodation and the management and maintenance services as part of the sub regional Temporary to Settled Scheme which delivers 861 properties in four West London boroughs.

3.27.4 If Members give approval to award the contract to LHP, Members will need to agree to delegate authority to the Director of Housing and Community Care, to agree the contractual agreements which shall be entered into by the council and LHP or their sub contractors as some of these documents are still to be finalized. Members should note that the Director of Housing and Community Care will consult with the Borough Solicitor and Director of Finance and Corporate Resources in finalizing these documents in order to protect the council's legal and financial interests.

3.27.5 Once the contractual documents have been agreed they will need to be executed on behalf of the council. Given this, Members are asked to authorise the Borough Solicitor, or an authorised delegate on her behalf, to execute all of the legal agreements, contracts and other documents on behalf of the council referred to in this report (and such other legal agreements and documentation which may be necessary to give full effect to the Scheme, subject to receiving confirmation of the grant allocation to LHP from the HCA, or executing such contracts and other documentation with the pre-condition that they shall only come into effect upon the issuing of the social housing grant by the HCA.

3.27.6 Members are also asked to approve the issue of a Contracts Act Certificate in accordance with paragraph 2.6 and agree that the Director of Finance and Corporate Resources will be fully indemnified by the council in the event of any claim against him arising from the provision of any certificate he may issue.

3.27.7 Members are also asked to agree that the Director of Housing and Community Care shall seek to obtain any necessary Secretary of State consents and approvals in respect to this Scheme

4.0 Financial Implications

4.1 The West London Housing Partnership employed BDO Stoy Hayward to audit the financial model for the Scheme and give advice on the reasonableness of the arrangements. An overview of the financial arrangements and risks are set out in the main report and also included in the BDO report attached at Appendix F1.

4.2 BDO Stoy Hayward have advised that the financial arrangements to be used are reasonable, follow normal practice for deals of this nature, and all the alternatives entail uncertain break costs and offer no significantly better deal. In particular, fixed rate borrowings, which have been suggested as an alternative, would only work with rents significantly above market rates at the start of the Scheme and this would clearly not work with the LHA regime. Further advice will be provided on the financial agreements between LHP and Lloyds TSB, additional modelling of the Scheme and an accounting opinion.

4.3 The Housing Corporation has allocated £54.5m to the Scheme. There is no capital input required from the council. The council will be contracted to pay a lease payment for each property which will be financed by rent received from the tenant. The council will charge the maximum allowable which in the long run is expected to be LHA adjusted by any additional allowances that apply to temporary accommodation. The council will pay the rent monthly in advance and LHP will pay the rent gathered by the RSLs monthly in arrears.

4.4 BDO has reviewed the project documents and has provided an accounting opinion based on the information that is currently available. A copy of their opinion is provided in Appendix F4. Once BDO's final report is received on the accounting treatment, officers will be discuss the opinion with the council's appointed auditors. The initial view is that obtaining an "off balance" sheet opinion for this project should be achieved.

4.5 The leases will attract a Stamp Duty Land Tax liability. The current estimates for these costs are estimated to total £736,720 for the whole Scheme. LHP has agreed to meet these costs and these have been incorporated within the financial model. Given this, the council will not have to make further provisions of any stamp duty liabilities arising from leasing these properties. A stamp duty liability may arise from the council's nomination rights at the point of conversion, however as the agreement will not be in place until the point of conversion it is difficult to assess the extent of the liability and calculate the costs of meeting this liability.

4.6 Contractors and funders operating in the Private Public Partnership (PPP) and Private Finance Initiative (PFI) sector require as market practice certificates to be issued by local authorities in connection with this types of contract and the Funders direct agreement. The effect of the certificate is to protect the legal position of the Contractor and funder in the event that it is subsequently determined the council do not have the power to enter into either of these agreements and/or there is a determination by the Auditor which has the effect of making the agreements void. In effect the council would still be liable to the contractor and funder if it had acted ultra vires in entering into the contract and funder's direct agreement. Given this, Members are asked to agree that the Director of Finance and Corporate Resources can issue on behalf of the council, such certificate or certificates under the Local

Government (Contracts) Act 1997 to LHP in respect of the West London Temporary To Settled Housing Scheme and to LHP's funders, LloydsTSB, in respect of any direct agreement entered into between the council, such funders and LHP. In addition, Members are asked to agree that the Director of Finance and Corporate Resources will be fully indemnified by the council in the event of any claim against him arising from the provision of any certificate.

4.7 The Council's cost of managing this scheme are to be funded from the Temporary Accommodation budget, using funding that has been set aside from a management allowance subtracted from the tenants' rent charge and from existing budgets for nomination fees applicable for short term temporary accommodation leasing schemes which are intended to decrease as supply of units under the scheme increase. The provisional budget is set out in Appendix F6.

5.0 Legal Implications

5.1 The Executive received a detailed report on 11 February 2008 on the proposed Sub Regional Temporary to Settled Housing Scheme. The report to the February 2008 Executive outlined that a competitive negotiated procedure under the EU Regulations had been followed and as the proposed contractual arrangements are classed as a High Value Contract for the purposes of the Council's Contract Standing Orders and Financial Regulations, Contract Standing Order 88 requires the Executive to consider all relevant information to enable it to give approval. On consideration of the February 2008 report, the Executive made various decisions relating to the award of the contracts including delegations to officers to finalise contractual terms. In the light of the changes to the Scheme (identified more particularly in paragraphs 3.14 to 3.16 and the issues identified in paragraphs 5.2 to 5.14 below, the Executive is being asked to reconfirm a number of its decisions made at the 11 February 2008 meeting, being those repeated in paragraphs 2.2, 2.3 and 2.4 of the report so as to ensure that the Executive is still content to proceed with the proposed contractual arrangements.

5.2 Following the decision of the Administrative Court at first instance in <u>R on the application of Risk Management Partners Limited v LB Brent</u> (the RMP case) which raised questions on the legal powers of local authorities acting jointly in the procurement of services, including sharing of potential liabilities, the opinion of James Goudie QC was taken on 23rd September 2008 by the participating authorities. A copy of opinion is provided in Appendix L1, which is below the line. It should be added that the RMP case is subject to appeal and the outcome of the appeal is expected in April or May this year.

5.3 Entering into the proposed Scheme with its sharing of risk between the authorities as described in paragraph 3.20.5 of the report should be primarily on the basis of Section 2 of the Local Government Act 2000, the well-being power, which reads.

Section 2 Promotion of well-being

(1) Every local authority are to have power to do anything which they consider is likely to achieve any one or more of the following objects—
(a) the promotion or improvement of the economic well-being of their area,

(b) the promotion or improvement of the social well-being of their area, and

(c) the promotion or improvement of the environmental well-being of their area.

(2) The power under subsection (1) may be exercised in relation to or for the benefit of—

(a) the whole or any part of a local authority's area, or

(b) all or any persons resident or present in a local authority's area.

(3) In determining whether or how to exercise the power under subsection (1), a local authority must have regard to their strategy under section 4.

(4) The power under subsection (1) includes power for a local authority to—

(a) incur expenditure,

(b) give financial assistance to any person,

(c) enter into arrangements or agreements with any person,

(d) co-operate with, or facilitate or co-ordinate the activities of, any person,

(e) exercise on behalf of any person any functions of that person, and

(f) provide staff, goods, services or accommodation to any person.

(5) The power under subsection (1) includes power for a local authority to do anything in relation to, or for the benefit of, any person or area situated outside their area if they consider that it is likely to achieve any one or more of the objects in that subsection.

(6) Nothing in subsection (4) or (5) affects the generality of the power under subsection (1).

Members are asked, in particular, to note the content of section 2(1) of the Local Government Act 2000, as set out above, regarding the well-being power and section 2(4) of the Act which states what the well-being power includes.

5.4 Section 3 of the Local Government Act 2000 sets out the limits on the exercise of the well-being power. Under section 3(1), the well-being power does not enable a local authority to do anything which it is unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment (whenever passed or made). Section 3(2) states that the well-being power does not enable a local authority to raise money, either by precepts borrowing or otherwise. Under section 3(5), before exercising the well-being power, a local authority must have regard to any guidance for the time being issued by the Secretary of State about the exercise of that power. The current Guidance from the Secretary of State is discussed in paragraph 5.6 below.

5.5 Section 2(3) states that when a local authority determines whether or how to exercise the well-being power, consideration must be given to its strategy under section 4. Under section 4(1), a local authority must prepare a strategy (often known as a community strategy) for promoting or improving the economic, social and environmental well-being of their area and contributing to the achievement of sustainable development in the United Kingdom.

5.6 When a local authority considers exercising its well-being powers, it should give careful consideration to the content of the Guidance issued by the Secretary of State, entitled "Power to promote or improve economic, social or environmental well-being", under section 3(5) of the Local Government Act 2000. This Guidance states that the well-being power is wide ranging and enables authorities to improve the quality of life, opportunity and health of their local communities. The Guidance also states that the breadth of the power is such that local authorities can regard it as a "power of first resort".

5.7 The said Guidance says, that instead of searching for a specific power elsewhere in statute in order to take a particular action, local authorities can instead look to the well-being power in the first instance and ask themselves the following questions:

(a) Is the proposed action likely to promote or improve the wellbeing [i.e. economic, and/or social and/or environmental well-being] in our area? If yes, then you can proceed to the next question.

(b) Is the primary purpose of the action to raise money? If not, then you can proceed to the next question.

(c) Is it explicitly prohibited on the face of other legislation? If not, then you can proceed to the next question.

(d) Are there any explicit limitations and restrictions on the face of other legislation?

If the answer to the first question above is "Yes" and to the next two questions is "No", then a council can proceed with the proposed action, subject to the answer to the fourth question, i.e. any restrictions or limitations that may apply by virtue of being spelt out on the face of other legislation.

It is important that the Members go through this process when considering whether the council should exercise its well-being powers so that the decision making process is robust and can withstand any potential legal challenge.

5.8 Under section 206 of the Housing Act 1996, a local authority has the power to discharge its housing functions under Part VII of the Housing Act 1996 in relation to homelessness in the following ways:

(i) by securing that suitable accommodation provided by the local authority is available;
(ii) by securing that the homeless person obtains suitable accommodation from some other person; or
(iii) by giving the homeless person such advice and assistance as will secure that suitable accommodation is available from some other person.

Counsel's Opinion in Appendices L2 and L4, which are below the line, discusses the issue of relying on section 206 of the Housing Act 1996 in conjunction with section 111 of the Local Government Act 1972.

5.9 Under section 111(1) of the Local Government Act 1972, a local authority shall have power to do any thing (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 any of their functions. This is known as the subsidiary power of local authorities.

5.10 It is envisaged that the councils will hold the legal interest of the properties pursuant to leases granted to them by London Housing Partnerships and that

London Housing Partnerships will manage the council's temporary accommodation properties on the councils' behalf. In order for London Housing Partnerships to carry out the housing management functions in respect of these properties in which the council has a leasehold interest, consent from the Secretary of State will be required under section 27 of the Housing Act 1985 for the council to delegate its housing management functions to another person in respect of its properties. On 19 February 2009, the Secretary of State issued a "General Consent" under section 27 of the Housing Act 1985, which is entitled "The General Approval for Housing Management Agreements 2009". The General Consent sets out three circumstances in which an application for specific consent under section 27 of the Housing Act 1985 is not required. One of the three circumstances is for housing management agreements where a contractor is awarded the work following a competitive process. Officers are seeking legal advice as to whether an application for specific consent is required under section 27 or whether the housing management arrangements being proposed by the councils and London Housing Partnerships are covered by the General Consent.

5.11 Local authorities have a duty under Part VII of the Housing Act 1996 to house homelessness persons in temporary accommodation who satisfy the qualifying criteria (i.e. eligibility, homeless, priority need, not intentionally homeless and local connection).

5.12 The council can only discharge its duty to house qualifying homeless persons in temporary accommodation under the circumstances set out in section 193 of the Housing Act 1996 and the circumstances in which this duty can be discharged are as follows:

(i) if the homeless person accepts an offer of permanent accommodation from the council in the form of a secure tenancy under Part VI of the Housing Act 1996;
(ii) if the homeless person accepts an offer of an assured tenancy (other than an assured shorthold tenancy) from a private landlord; or
(iii) if the homeless person accepts a qualifying offer of an assured shorthold tenancy with the council's approval and is advised in writing in advance that he is under no obligation to accept the offer of accommodation.

5.13 The duty under section 193 of the Housing Act 1996 will cease to exist if

(i) the applicant ceases to be eligible for assistance;
(ii) the applicant ceases to occupy the accommodation as his/her only or principal home, or
(iii) the applicant becomes homeless intentionally from the temporary accommodation provided.

5.14 Council tenancies that are offered to homeless persons and other housing applicants as permanent accommodation under Part VI of the Housing Act 1996 are secure tenancies and these tenancies are governed under the Housing Act 1985. At present, the council can discharge its duties if the applicant accepts an offer of an assured tenancy (not an assured shorthold tenancy unless the homeless person accepts a qualifying offer of an assured shorthold tenancy with the council's approval and is advised in writing in advance that he is under no obligation to accept the offer of accommodation) with a private landlord and this type of tenancy is governed by the Housing Act 1988. A private landlord in these circumstances is often a registered social landlord. The main practical difference between secure and assured tenancies is that the grounds for eviction and the eviction procedure are slightly different. In practice, it is more difficult to evict secure tenants than it is to evict assured tenants. The rights to succession are also different.

5.15 Two new recommendations at paragraphs 2.6 and 2.7 of the report are sought, namely the giving of a Contract Act Certificate(s) under the Local Government (Contracts) Act 1997 in respect of the contractual arrangement being entered into with LHP and LloydsTSB and also an indemnity to the Director of Finance and Corporate Resources in relation to any personal liability that may flow from the giving of such Certificate. In complex procurements contractors and funders often require certificates to be issued by local authorities in connection with the main contractual documents and also the funder's direct agreement. The effect of the certificate is to protect the legal position of the contractor and funder in the event that it is subsequently determined that the council does not have the power to enter into either of these agreements and/or there is a determination by the auditor which has the effect of making the agreement void. In effect the council would still be liable to the contractor and funder even if it had acted ultra vires in entering into the main contractual agreements and the funder's direct agreement. In this Scheme both LHP and it funders, LloydsTSB have sought Contracts Act Certificates. Members are referred to the opinion from counsel at Appendix L4 for details of the council's power to enter into contractual documentation regarding the Scheme.

5.16 There has been substantial completion of negotiations on key commercial and contract terms. The contractual documentation reflecting the negotiations attempts to minimise the risks associated with the Scheme as set out in paragraph 3.25 of the report and the reports from BDO (see Appendices F1 and F4) and from counsel and Winkworth Sherwood (see Appendix L3). There are however ongoing discussions regarding outstanding issues and delegation of authority to the Director of Director of Housing and Community Care, in consultation with the Director of Finance and Corporate Resources and the Borough Solicitor, to agree these outstanding contractual issues and arrangements is sought. If discussions result in a substantive change to the Scheme as detailed in this report, a further report will be submitted to the Executive.

5.17 In accordance with Contract Standing Order 107 (which gives effect to the relevant provision of the EU Procurement Regulations) there is required to be a 10 day standstill period between notifying all tenderers in writing of the contract award and the actual award of the contract. As this is a collaborative procurement, the 10 day standstill period will not begin to run until after the procurement has been considered by the Executive of each participating council. Following award the councils will be required to publish a contract award notice in the OJEU within 48 days of contract award.

6.0 Diversity Implications

6.1 There are no changes to the diversity implications previously reported to the Executive in respect to this scheme in February 2009.

7.0 Staffing/Accommodation Implications (if appropriate)

7.1 None

Background Papers

Supply and Demand and Temporary Accommodation Report to Executive - April 2007
Authority to Invite Tenders Report to Executive – June 2007
Authority to Award Contract for Sub-Regional Temporary to Permanent Housing Scheme – February 2008

Appendices

General Information

G1.	Scheme Structure Chart	Provided	
G2.	LHP Board Membership	Provided	
G3.	Risk Appraisal	Provided	Not for publication
G4.	Report on Procurement Programme	Provided	Not for publication

Legal Information

L1.	Legal Advice From Counsel	Provided	Not for publication
L2.	Legal Report from Winkworths	To follow	Not for publication
L3.	HRA Waiver Consultation Documents	Provided	Not for publication
L4.	Legal Advice From Counsel (March 09)	To follow	Not for publication

Financial Information

F1	BDO Report on Evaluation of Scheme and Financial Risks	Provided	Not for publication
F2	Head of Terms for Loan Agreement	Provided	Not for publication
F3	Conversion Analysis	Provided	Not for publication
F4	Accounting Treatment Report (Draft version only)	Provided	Not for publication
F5	Model to Assess LHA rent Vs PSL rents	To follow	Not for publication
F6	Budgetary Provision	Provided	Not for publication

Contact Officers

Manjul Shah
Head of Affordable Housing Development
Affordable Housing Development Unit
7th floor, Mahatma Gandhi House
34 Wembley Hill Road, Wembley, Middlesex HA9 8AD
Tel 020 8937 2523
Email manjul2.shah@brent.gov.uk

MARTIN CHEESEMAN
Director of Housing and Community Care