BRENT COUNCIL	**Executive** 15 March 2010 **Report from the Director of Housing and Community Care**
	Wards affected: ALL
Housing and Social Care Non HRA PFI Project – authority to award Phase 2 of contract	

Forward Plan ref: H&CC -09/10- 37

Appendix 2 is not for publication as this contains the following categories of exempt information as specified in the Local Government Act 1972, namely:

i) Information relating to the financial or business affairs of any particular person (including the authority holding that information);

ii) Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;

and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

1.0 SUMMARY

1.1 The Housing and Social Care PFI was developed to provide social housing and replacement residential facilities for people with learning disabilities with the aid of a government grant. The Council appointed Brent Co-efficient (BCE), which is now a wholly owned subsidiary of Hyde Housing Association, as preferred bidder in October 2006 and provided delegated authority to the Director of Housing and Community Care in October 2007 and July 2008 to agree the PFI Project Agreement.

1.2 Financial close was reached on Phase 1 of the the project in December 2008 and this included the provision of 195 housing units and 20 units for people with learning disabilities. Since December 2008, there have been negotiations on the provision of further housing units as part of Phase 2 of the scheme. Changes to interest rates and bank margins since December 2008 have required measures to be taken, as part of these negotiations, to ensure Phase 2 of the scheme remains affordable. One of these measures is a reduction in the number of planned units for Phase 2 from 185 reported previously to 169, reducing total units for both phases of the scheme from 400 to 384.

1.3 Negotiations are now complete and financial close on Phase 2 is scheduled for 31st March 2010. The Phase 2 contract is an extension of Phase 1 and most of the documentation remains the same as Phase 1. However, new requirements from the banks have meant that arrangements for paying off residual debt at the end of the contract period have had to be changed, as have the arrangements for compensation on early termination of the contract.

1.4 The full background to, and details of, the scheme were included in reports to the Executive on 8th October 2007 and 14th July 2008. Copies of these earlier reports are available should members wish to refer to them.

2.0 RECOMMENDATIONS

The Executive is asked to:

2.1 Note the progress on delivery of Phase 1 of the scheme in paragraphs 3.3 to 3.5.

2.2 Agree to the revised total of 165 units at Phase 2 of the scheme – taking total units for Phase 1 and Phase 2 to 384 – as set out in paragraph 4.6 of the report.

2.3 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 variation to the PFI Project Agreement and all other related documents including those which shall be entered into by the Council with any of Brent Co-Efficient's funders or subcontractors, in order to enable financial close on Phase 2 of the project.

2.4 Authorise the Borough Solicitor, or authorised delegate on her behalf, to execute all of the legal agreements, contracts and other documents on behalf of the Council in relation to Phase 2 of this project (and such other legal agreements and documentation which may be necessary to give full effect to the variation to the PFI Contract), subject to her receiving confirmation of credit approval from the Department for Communities and Local Government or, executing such contracts and other documentation with a pre-condition that they shall only come into full effect upon the issuing of such PFI credit approval by the CLG.

2.5 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 in respect of:

a. the Deed of Amendment to give effect to the variations to the PFI Project Agreement;

b. the Direct Agreement Amendment Deed to give effect to the variations to the Direct Agreement entered into between the Council, the funders and Brent Co-Efficient; and

c. the Residual Value Amendment Deed to give effect to the revised Residual Value Deed to be entered into between the Council, Hyde Housing Association and the funders.

2.6 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/decisions in 2.5 above.

3.0 BACKGROUND

3.1 The Executive received reports in October 2007 and July 2008 on the Housing and Social Care PFI. These detailed the background to the scheme and sought delegated authority for the Director of Housing and Community Care to reach final agreement on the scheme.

3.2 The scheme included 380 social housing units and 20 learning disability units. The social housing units included properties at market rents and affordable rents with a gradual transfer from market rent to affordable rent during the 20 year contract period and nomination rights in perpetuity to a minimum of 158 affordable housing units. The Council would be entitled to more than 158 nomination rights if the value of the properties at the end of the contract period exceeded the amount of debt on the properties. The 20 learning disability units are being built under licence on land transferred to the Council as part of the scheme. Facilities management of the units is provided as part of the contract.

3.3 The need to identify suitable sites for the scheme meant that it had to be in two phases. Phase 1, which reached financial close in December 2008, included the delivery of 195 social housing units and 20 units for people with learning disabilities. Phase 2 was intended to deliver a further 185 units, taking the total to 400. It had originally been intended that financial close on Phase 2 would be reached 12 months after financial close of Phase 1.

3.4 The scheme was one of only a relatively small number of PFI schemes to reach financial close in 2008 and its innovative nature led to it being awarded best ‘Housing or Regeneration Project’ at the national Public Private Finance awards in May 2009.

3.5 Units for Phase 1 of the scheme are in the process of being delivered. The 15 units for people with learning disabilities on Tudor Gardens are complete and are due to be occupied with effect from 31st March 2010. Work is progressing on the 57 PFI housing units on Empire Way which is due to complete later this year. In addition, works have commenced on four of the other sites to deliver 76 PFI units. It is anticipated that the construction programme to deliver the remaining three sites will commence over the next few weeks. The timetable for delivery of Phase 1 units is set out in Table 1.

3.6 Phase 2 of the scheme is now close to being finalised. Sites have been identified and schemes developed which would provide a total of 169 units, 16 short of the original target of 185. All but one of the sites have planning permission. The final site – The Mall in Kenton – is due to be considered at Planning Committee on 17th March. Revisions required to Phase 2 of the PFI scheme as a result of changes in the financial markets have been negotiated. Subject to members’ approval of the revisions, and decisions of the Planning Committee on The Mall, the scheme is on target for financial close at the end of March. Details of Phase 2 are described in Section 4 of this report.

Table 1 Phase 1 sites, including expected date of completion

Site	Number of units	Expected date of completion
Tudor Gardens (learning disability units)	15	10/03/10
Empire Way	57	30/09/10 – 01/11/10
167 Willesden Lane (including 5 learning disability units)	11	31/07/10
Winchelsea Road	31	01/02/11
9 Willesden Lane	13	28/02/11
Melrose House	21	30/06/11
Barnhill Cottages	15	21/06/11
Fawood Avenue	45	01/07/11-29/08/11
191 Willesden Lane	7	01/11/11
Total Phase 1 units	**215**	

4.0 Phase 2 proposals

Sites

4.1 Phase 2 proposals include provision of up to 169 housing units on five sites as set out in Table 2.

Table 2 Phase 2 sites, including expected date of completion

Site	Number of units	Expected date of completion
Perrin Road	9	31/07/11
Campbell House	7	31/10/11
Fawood Avenue	21	31/10/11
Brook Avenue	44	29/02/12
The Mall	88	31/05/12
Total Phase 2 units	**169**	

4.2 All sites are owned by Hyde Housing Association, apart from The Mall for which the sale to Hyde by the current owner has been agreed subject to planning permission being granted.

Affordability

4.3 The ripple effect of the banking crisis has affected affordability of Phase 2 of the scheme. There are three main factors that have contributed to reducing affordability, as follows:

a. Bank margins (which are the amount banks charge above long term interest rates to reflect risk) have gone up. They were under 1% when BCE was originally appointed as preferred bidder, had reached about 1.5% when financial close was reached on Phase 1 in December 2008, and are now in excess of 2%.

b. Long term interest rates have gone up. These were at a historic low of under 4% when financial close was reached for Phase 1 (offsetting to some extent the impact of higher margins) but more recently have fluctuated within a 4% to 4.5% band.

c. Banks' willingness to take on risk has reduced. This has affected the scheme in two main ways, as follows: (1) the banks are not willing to fund as high a proportion of the debt as they were prepared to when Phase 1 closed; (2) the banks are now requiring some of the debt to be paid back over the contract period whereas for Phase 1 they were willing to provide an interest only loan on the basis that the value of the properties at the end of the contract period would be sufficient to repay the debt.

4.4 In order to address these changes, measures have been taken to review other costs – in particular construction costs for Phase 2 have been reviewed to reflect changes in construction prices as a result of recession - with the balance of the affordability gap being addressed by a reduction in the number of units (from 400 to 384). In addition, Hyde Housing Association have increased the level of their own financial resources being used to fund the scheme to offset the reduced proportion of funding provided by the banks.

4.5 The result is that the scheme is now affordable. Details of the Council's contribution to the scheme following these changes are included in the financial implications section of this report.

Outputs

4.6 The outputs from the combined Phase 1 and 2 are now 384 units in total. The table below sets out changes since the position reported to the Executive in July 2008. Total units have been reduced from 400 to 384. The number of units for people with learning disabilities – 20 – remains as before. In addition the Council will retain guaranteed nomination rights in perpetuity to a minimum of 158 affordable housing units at the end of the contract period, which is in line with what was approved when the scheme included 400 units in total. There is a gradual transfer of properties at market rents to properties at affordable rents. The number of properties at affordable rents at the end of the project has now been aligned with the number of affordable housing units to which the Council has guaranteed nomination rights in perpetuity. This has helped secure affordability of Phase 2, ensure that the Council has a financial contingency (see financial implications), and will mean that the Council is guaranteed to maintain properties that are at affordable rents at the end of the contract in perpetuity.

Table 3 Change in proposed outputs from the project since July 2008 (assuming a Phase 2 variation)

	Number of units:			
	July 2008 position		**Current Position**	
	Start of contract	Expiry of contract	Start of contract	Expiry of contract
Social housing unit at affordable rents (includes 15 semi-independent care units)	130	183	125	158*
Social housing units for homeless people at market rents	250	197	239	206
Registered care home places	15	15	15	15
Respite beds	5	5	5	5
Total	**400**	**400**	**384**	**384**

*Subject to the terms of the Residual Value Deed.

Approvals

4.7 In addition to Council approval, approvals are needed from the banks, the Hyde Board, and the government.

4.8 The banks that funded Phase 1 of the project, Barclays and Nord LB (a German Bank), will be funding Phase 2 of the project. The final funding decisions are subject to agreement by the banks' credit committees. The banks are however supportive of the project and it is expected that they will receive credit committee approval for the funding.

4.9 The Hyde Board approved the scheme at their meeting on Thursday 4th March 2010 based on the project arrangements set out in this report.

4.10 The government has approved £37m of PFI credits for this scheme. £21.2m has been allocated to Phase 1 and will start to be paid from the date that the Tudor Gardens service commences, which is expected to be 31st March 2010. The other £15.8m will be paid once financial close on Phase 2 has been reached. The original PFI credit approval was based on a total of 400 units being delivered with a pro-rata reduction if the number was below 400. However, Council officers met officials from the Homes and Communities Agency on 20 November 2009 to explain the changes proposed to the scheme financing requirements and the consequential change to outputs. Following this meeting, the HCA notified the Council that that they would agree to apply the existing level of PFI credits if there was a reduction of up to 20 units from the originally agreed 400 units. This approval is subject to financial close being reached on Phase 2 and the Council continuing to receive guaranteed nomination rights to a minimum of 158 units at the end of the contract. A copy of this letter is attached in Appendix A.

Risks

4.11 The main risks associated with Phase 2 and means of addressing them are set out in Table 4:

Table 4 – Key Project Risks

Risk	**Means of addressing it**
1. Planning approval is not granted on The Mall. If planning approval is not granted, this would lead to delay in Phase 2 of the PFI scheme which could lead to additional costs and the overall scheme becoming unaffordable.	The proposed scheme has been designed following detailed consultation with the Planning Department. Additionally, there has been a series of consultation exercises held with residents. The plans incorporate recommendations and address comments that have been raised by planning officers under the pre-planning consultation process. Planning officers consider that the proposed scheme complies with planning policy requirements and are making a recommendation for planning permission to be granted. The Planning Committee was briefed in 2007 on the PFI scheme and is aware of the wider benefits it brings to meeting housing need in the borough.
2. Other approvals – eg the banks, government – are not granted leading to the scheme having to be abandoned.	All parties involved in the scheme have been kept fully aware of developments and remain supportive. There are currently no indications that any of the other parties will not approve Phase 2.
3. Movements in interest rates make the scheme unaffordable.	This risk is primarily Hyde's since the financial model used for Phase 2 adjusts the Hyde return on their investment should other elements of the model change. If however there were to be a large upward movement in interest rates, this might make the return to Hyde insufficient to justify the investment in which case Phase 2 could not go ahead as currently agreed and may have to be renegotiated.

Risk	Means of addressing it
4. Legal challenge to granting of planning applications would mean work would have to stop on site until the issue had been resolved. This would lead to delay and additional costs which the Council would have to meet.	The risk of successful legal challenge is low so long as the Council has followed correct planning procedures. Any legal challenge would be confined to The Mall and Brook Avenue because planning permission for all other sites was granted more than three months ago. The Council has agreed to take on this risk to enable the scheme to proceed prior to expiry of the period for legal challenge. Neither Brook Avenue nor The Mall are scheduled to start on site until after the 3 month legal challenge period together with the standard time for a challenge being heard expiries. There would be costs to the Council if a legal challenge succeeded.
5. Rents assumed in the model cannot be sustained. The rents assumed in the model are based on social housing target rents (permanent units) and assumed market rents (temporary units). There is little risk with the rents for permanent units but sustainability of rents for the temporary units depends on them being assessed as being at an acceptable level for housing benefit subsidy purposes.	As part of Phase 2 negotiations, market rents for temporary units included in the PFI model have been changed from an average rent applied to all property sizes to a differential rent based on property size. The rents are linked to the costs of the scheme and do not include any element of profit for the Council. This is a reasonable basis for setting the rents but there is an element of risk if government policy on application of housing benefit subsidy to this kind of scheme changes. In that case, there is the opportunity for the Council to review the speed at which units change from temporary to permanent or the balance of temporary units between the north and the south of the borough.

4.12 There is one commercially sensitive risk that is set out in Appendix B.

Phase 3

4.13 Previous reports referred to the possibility of Phase 3 of the scheme if additional PFI credits were available. Council and BCE discussions have focused on achieving financial close of Phase 2 in difficult funding conditions. In addition, there have been no further discussions with HCA about the possibility of funding a Phase 3 although reduced resources available to them as a result of public spending reductions makes that more unlikely than before. Officers will continue to explore the possibility of a Phase 3 and report back to members should funding opportunities be available.

5.0 FINANCIAL IMPLICATIONS

5.1 This section of the report addresses financial implications of the scheme.

Funding of the scheme

5.2 The total estimated unitary charge to the Council varies from year to year depending on the number of properties and the profile of costs incurred by BCE. It averages £4.6m per annum (in cash terms) over the 19 years over which payments are made. £3.4m per annum of these costs are met from the conversion of £37m of PFI credits into an annual revenue grant. The balance of £1.2m per annum is met from the Council's budget contingency of £150k per annum and has been retained by the Council to fund client costs (including legal and technical as well as housing's own client function), impact of change notices, adaptations which had been agreed as a pass through cost, and rent risk.

5.3 Table 5 below shows the Council's budgeted contribution up to 2013/14. From 2014/15 onwards the Council's contribution increases by 2.5% per annum until contract completion in December 2028. The budgeted contribution is sufficient to meet the Council's contribution to the unitary charge and fund the Council's contingency.

Table 5 Council contribution to Phase 1 and 2 of the scheme

	2009/10 £'000	2010/11 £'000	2011/12 £'000	2012/13 £'000	2013/14 £'000
2010/11 budget and medium term financial plan	576	1,003	1,159	1,188	1,218

Accounting treatment

5.4 At the time of financial close of phase 1, the accounting treatment indicated that the PFI properties would not be on the Councils balance sheet. Local authorities are now obliged to account for PFI projects using international accounting standards. Officers have asked BDO, the Council financial advisers on this project, to advise on the accounting treatment and whether the scheme will remain off the council's balance sheet. Their preliminary view is that nomination rights to the housing units will not be considered on balance sheet but the care home units will be on balance sheet. There is also now a requirement to report to government on the National Accounts balance sheet treatment. Subject to the Homes and Communities Agency being satisfied with the proposed treatment, and therefore PFI grant not being affected, the accounting treatment should not affect the affordability of the project.

Costs incurred by the Council on Phase 2

5.5 The Council has to employ professional advisers and meet other costs associated with delivery of Phase 2 of the scheme. These are estimated to amount to £231k in 2009/10 and can be funded from the 2009/10 budget provision for the PFI. In addition, the Council has incurred £160k staffing costs and other clienting costs in 2009/10 in respect of managing the delivery of contract during the construction phases which have been funded within existing budgets.

6.0 LEGAL IMPLICATIONS

6.1 Financial Close in respect of Phase 1 of the non HRA PFI contract was reached on 19 December and this resulted in the release by the Communities and Local Government Department of confirmation of the formal issue of PFI credits for the total amount of £37 million subject to the following (amongst other) conditions:

- payment of full subsidy generated by credits of £37 million will be triggered by the first Phase 1 units becoming operational provided the Phase 2 variations to bring the total number of units up to 400 have been signed by the Council and the Contractor by the date that the PFI grant claim form is submitted to the department;

- if no variations are agreed the credits to the scheme will be reduced to £21.2 million;

- if agreed variations do not bring the total number of units up to 400, the credits will be calculated according to a specific formula identified in the PFI credit letter. This formula seeks to pro-rata the additional £15.8 million credits to the number of units constructed under a Phase 2 variation.

6.2 The report at paragraph 4.10 confirms that CLG (through the Homes and Communities Agency who are charged with the responsibility of facilitating housing PFI arrangements) has confirmed that the full amount of additional PFI credits (£15.8 million) will be available despite the fact that the number of units identified in the proposed Phase 2 of the PFI project are less than initially anticipated when the PFI credit approval was obtained. It is clearly important for the Council to receive formal confirmation of this by way of letter from CLG.

Procurement

6.3 The PFI Contract entered into between the Council and Brent Co-Efficient provides a contractual mechanism to vary the contract to incorporate the changes proposed to facilitate the introduction of the Phase 2 units into the project. The Council is entitled to vary the contract to give effect to the Phase 2 element of the project without subjecting the variation to a new procurement process under the European Union procurement regime as the Phase 2 variation is an extension of an opportunity in the Official Journal of the European Union. The OJEU notice advertised the proposed contract for the construction of (as initially anticipated) 500 units and thus the proposed variation to incorporate Phase 2 is not in excess of the opportunity that was advertised to the market. Despite this, Brent Co-Efficient's funders are concerned about the potential risk (albeit small) that awarding a variation of the existing contract might give rise to a challenge from an aggrieved contractor and in particular for the variation to be declared ineffective under the new Public Contracts (Amendment) Regulations 2009. These Regulations introduce the remedy of "ineffectiveness", which effectively obliges a court to order that a contract is ineffective in the event that a contracting authority has directly awarded a contract to a contractor without first advertising in the OJEU. This extends to variations of existing contracts where a variation could be said to be a material difference to the existing contract, thereby creating a new contract for the purpose of the EU procurement regulations.

6.4 The remedy of "ineffectiveness" can be claimed by an aggrieved contractor up to six months after the contract (or the variation/amendment) has been entered into. This can mean that the status of a variation is at risk for a long period of time. Therefore, the Public Contracts (Amendments) Regulations 2009 provide that a contracting authority, i.e. in this case the Council, can lodge a voluntary transparency notice in the OJEU in order to reduce the time limits that an aggrieved contractor can challenge the variation of the existing contract.

6.5 By publishing a voluntary transparency notice in the OJEU, announcing its intention to award the variation directly to Brent Co-Efficient and explaining why it believes that a lack of prior publicity was justified and provided that the Council waits at least ten calendar days from the publication of that voluntary transparency notice before entering into the Contract, a third party will not be able to claim that the contract is ineffective.

6.6 In those circumstances the Council proposes to issue a voluntary transparency notice and wait the ten days standstill period before giving effect to the Phase 2 variation.

6.7 Additionally the Public Contracts (Amendment) Regulations 2009 (in particular 47M) introduce the ability for parties to a contract which is declared ineffective by the court to agree provisions to regulate their mutual rights and obligations in the event that a declaration of ineffectiveness is made. To that end the funders for Brent Co-Efficient have also requested that a so called "Procurement Deed" be entered into which would set out the consequences for the Council and Brent Co-Efficient in the event that a declaration of ineffectiveness is made. The Procurement Deed will provide that in the event that a court declares the Phase 2 variation ineffective then the Council and Brent Co-Efficient agree that compensation payable in circumstances where the Council voluntarily terminates or is in default of the agreement shall apply. The terms of the Procurement Deed are not yet finally agreed.

Residual Value

6.8 The treatment of residual value in the properties and in particular how the residual value of the temporary and permanent dwellings would impact on the Council and Brent Co-Efficient (and Hyde Housing Association as Landlord in particular) was a unique feature of the Phase 1 PFI Contract. The Council and Hyde and Brent Co-Efficient entered into a Residual Value Deed at the close of the Phase 1 PFI Contract which, amongst other things, sought to capture the residual value of the dwellings which remain in the ownership of Hyde at the expiry of the contract.

6.9 At the end of the 20 year contract period the Council will retain the freehold ownership of the 15 registered care home places and have a 999 year lease on the 5 learning disability respite units (see Table 1 on Page 4). The Council also have nomination rights in perpetuity to all permanent units provided as part of the scheme, subject to the provisions of the Residual Value Deed. At expiry the permanent and temporary units will be valued by an independent valuer on the basis of the existing use value for social housing in respect of the permanent units and market value for the temporary units. In calculating the value the valuer will apply a 2% discount on temporary units to be sold on the open market to reflect the costs of disposal and 10% on permanent units. The 10% on permanent units is used to the meet the cost of refinancing. If the value of the properties (the Residual Value Sum) is greater than the Residual Value Sum (ie in other words, the Senior Debt Outstanding) then there will be a conversion of temporary units into permanent units of accommodation to enable greater, in perpetuity, nomination rights to the Council. If the value is less than the Residual Value Sum then an assessment will be made on the number of permanent units (in addition to the temporary units) which would need to be sold to cover the Residual Value sum. It has been agreed that the Council will have a minimum of 158 units permanent units upon which it will have nomination rights to at the expiry of the contract.

6.10 On early termination a similar valuation exercise is undertaken in accordance with the terms of the Residual Value Deed. It is worth highlighting that no properties can be disposed of during the contract term whilst the Council continues to pay a Unitary Charge. Where the Residual Value of the properties exceeds the Residual Value Sum the balance is used to convert additional properties into permanent units at affordable rents upon which the Council retains in perpetuity nomination rights over. In cases where termination results from contractor default, Hyde Housing Association must make up any shortfall between the Residual Value of the properties and the Residual Value Sum.

6.11 The parties have agreed commercially that the Council will retain nomination rights to the minimum number of 158 units, in line with the requirements of the Homes and Communities Agency. However, the Residual Value Deed variation itself has not yet been agreed and will have to be in place prior to financial close of Phase 2.

Contract Act Certificates

6.12 When Phase 1 of the PFI project was entered into by the Council the Director of Finance and Corporate Resources issued certificates under the Local Government (Contracts) Act 1997 in respect of the Project Agreement, the Direct Agreement entered into between the Council and the Brent Co-Efficient funders and the Residual Value Deed. The effect of a Contract Act Certificate is to provide comfort to the other party to the contract (and its funders) that even if the contract is declared void or ultra vires then a certificate issued under the Local Government (Contracts) Act 1997 will have the effect of rendering such contract intra vires. It is necessary for the Council as is recommended in paragraph 2.5 of the report that the Director of Finance and Corporate Resources certify the agreements referred to paragraph 2.5 of the report.

7.0 LEGAL POWERS

7.1 The Council has a number of powers which enable it to procure the accommodation and services envisaged within this variation to the existing contract namely:

- Part VII of the Housing Act 1996 places various duties on a local housing authority to secure that accommodation is available for persons who are homeless of threatened with homelessness including, Section 188: requiring the local authority shall secure that accommodation is available for a persons occupation if it believes that the applicant maybe homeless, eligible for assistance and have a priority need and section 193 where, unless the local authority can refer the applicant to another local housing authority it shall secure that accommodation is available for occupation by an applicant where it is satisfied that an applicant is homeless, eligible for assistance and has a priority need and is not satisfied that he become homeless intentionally;

- Section 21 of the National Assistance Act 1948 provides that a local authority may with the approval of the Secretary of State and to such extent as he may direct, make arrangements for providing residential accommodation to persons aged 18 or over who by reasons of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them;

- Section 2 of the Local Government Act 2000 provides that every local authority has the power to do anything which they consider is likely to achieve any one or more of the following objects- (a) the promotion of 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. The power may be exercised In relation to or for the benefit of: (a) the whole or any part of the local authority's area, or (b) all or any persons resident or present in a local authority's area. This power includes the power for the local authority to amongst other things provide staff, goods, services or accommodation to any person. The power to promote well-being does not enable a local authority to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in the enactment nor does it enable a local authority to raise money. Before exercising the power a local authority must have regard to the guidance that has been issued by the Secretary of State about the exercise of that power.

- Section 1 of the Local Government (Contracts) Act 1997 provides that ever statutory provision conferring or imposing a function on a local authority confers power on the local authority to enter into a contract with another person for the provision or making available of assets or services, or both, (whether or not together with goods) for the purposes of, or in connection with, the discharge of the function by the local authority. Members are also reminded that in exercising the well being power in section 2 of the Local Government Act 2000 that regard must be had to the provisions of the Council's community strategy and the authority must show that there is sufficient nexus between the strategy's aims and the intended outcomes of the contract to be entered into.

8.0 DIVERSITY IMPLICATIONS

8.1 Bidders' policies and procedures in respect of diversity issues formed an element of the evaluation methodology that was applied in determining appointment of the preferred bidder. Furthermore, policies, procedures and practices of the preferred bidder have been checked to ensure that all tenants are treated with respect and dignity. An Impact Needs and Requirement Assessment (INRA) has been completed for this scheme.

9.0 STAFFING/ACCOMMODATION IMPLICATIONS

9.1 There are no staffing/accommodation issues arising from this report.

10.0 BACKGROUND PAPERS

Background papers are available from Manjul Shah, Head of Affordable Housing, 7th Floor Mahatma Gandhi House, 34 Wembley Hill Road, Wembley, Middlesex HA9 8AD.

11.0 Contact Officers

Director of Housing & Community Care – Martin Cheeseman
Assistant Director of Housing – Maggie Rafalowicz
Director of Finance & Corporate Resources – Duncan McLeod

MARTIN CHEESEMAN
Director of Housing and Community Care

Appendix A

LETTER FROM HOMES AND COMMUNITIES AGENCY CONFIRMING PFI CREDITS FOR PHASE 2

From Steve Trueman, Chief Operating Operating Officer at HCA, to Maggie Rafalowicz, Assistant Director of Housing at Brent Council, dated 27th November 2009

Brent Non - HRA Housing and Social Care PFI Scheme

Thank you for meeting last Friday, it was helpful to hear about the work that is ongoing to reach an affordable and deliverable 2nd Phase for the above scheme. I undertook to come back to you on some broad principles following our discussions. I appreciate that there is some way to go before all of the discussions with your PFI Operator are concluded and a demonstrably affordable position reached and I would want to keep the HCA position under review until that point.

The HCA is agreeable to a small re-scoping of the overall original scheme outputs whilst retaining the existing total level of PFI credits, as part of the solution to achieving an affordable scheme in the current funding market conditions. Your paper of 23 October 2009 indicates a reduction of 20 units, 5% of the original total, and this level of change is acceptable. We would however want to be re-assured that in the final analysis, unaffordability is as a direct result of terms offered by funders and not due to some other reason.

We discussed the 'floor' in the number of guaranteed properties in the context of the above overall reduction in outputs and you indicated that there was some desire on the part of Hyde to see a pro-rata reduction of the floor to say around 151 properties. The original floor was key to the acceptability of this deal for CLG/HCA and the agency would find it difficult to accept any reduction in the number of properties guaranteed at the end of the scheme. We recommend you push back strongly on this point.

We discussed the timing of the close of Phase 2 and we note that you are still planning for Phase 2 close to coincide with Phase 1 service commencement - at 31 March 2010. However, should there be a delay to Phase 2 close, we will need to allocate Phase 1 credits at service commencement, with Phase 2 credits to follow at close of the second Phase. CLG will in any case need to re-issue the PFI credit letter at the point at which a final affordable position has been reached.

We agreed that Ellie would look at the documentation requirements pre close of Phase 2 and she will get back to you on this.

You were going to let us have regular updates on progress and aim to provide an updated paper in December.

Yours sincerely