



Executive

14 March 2011

Report from the Director of Housing and Community Care

Wards affected:

ALL

ALMO Amendment to Memorandum of Association – Registered Provider Status

1.0 Summary

- 1.1 In order to meet regulatory requirements for access to grant funding to progress existing new build development, and to secure financial benefits for the delivery of the Settled Homes Initiative (SHI), Brent Housing Partnership (BHP) needs to become a Registered Provider with the Tenant Services Authority (TSA).
- 1.2 Registered Provider status and the regulatory compliance regime with the TSA will only apply to BHP's directly owned social rented homes.

2.0 Recommendations

- 2.1 The Executive authorises the BHP Board to make amendments to its objectives within its Memorandum of Association as set out and tracked in Appendix A to this report in order to meet the requirements of the Tenant Services Authority (TSA) for registration as a social housing provider.
- 2.2 The Executive authorises BHP to apply for Registered Provider status with the TSA.
- 2.3 The Executive notes that the changes proposed in this report will not prejudice any actions or decisions which the Executive may make following the review of BHP that is currently being carried out on behalf of the Council by Navigant Consulting.

3.0 Detail

- 3.1 In 2008 BHP applied successfully to become an investment partner with the Housing Corporation (now the Homes and Communities Agency) in order to develop its own homes. New development is subject to compliance with the terms of a formal grant agreement, the current version of which includes a requirement for BHP to be a Registered Provider in order to claim housing grant.
- 3.2 In addition, changes to the calculation of the Local Housing Allowance and housing subsidy from 1st April 2011 applicable to temporary housing schemes managed by Registered Providers, and exemption from payment of Stamp Duty Land Tax will both contribute to the ongoing financial viability of the SHI. Details of the circumstances in which BHP will be treated more favourably as a Registered Provider compared to a private landlord in respect of the calculation of Local Housing Allowance and housing subsidy are set out in paragraphs 4.1 and 4.2 below. Details of the exemptions from paying Stamp Duty Land Tax as a Registered Provider are set out in paragraph 4.3 below.
- 3.3 The Tenant Services Authority issued regulatory guidance in April 2010 for organisations wishing to become Registered Providers, requiring specific wording to be included within the organisation's objectives regarding social housing provision, and to confirm its not-for-profit status.
- 3.4 BHP have discussed the requirements with the TSA, and taken independent legal advice on the proposed wording amendments. The revised wording, as set out and tracked in Appendix A to this report, does not fundamentally alter the status of BHP or its overall objectives. However, it provides clarification which meets the TSA's requirements for registration. Any amendment to BHP's Articles or Memorandum requires the approval of the BHP Board and the Council. The BHP Board gave their approval to the changes at its meeting on 24th February 2011 but the approval of the Council's Executive is also required before the changes can be made and brought into effect. This report seeks the approval of the Executive to agree the proposed changes to BHP's Memorandum of Association as set out in Appendix A to this report to enable BHP to apply for Registered Provider status with the TSA.
- 3.5 All existing Registered Social Landlords and local authority landlords automatically became Registered Providers with effect from 1 April 2010. Other organisations, including ALMOs, are required to follow an application process for registration as Registered Providers to the TSA.
- 3.6 The formal application process for registration with the TSA requires meeting the TSA's eligibility criteria in terms of the organisation's objectives and status, which must include the provision of social housing. Thereafter, the TSA completes an assessment against their viability standard and the organisation's ability to meet the six strands of the TSA's regulatory standards, which are: Governance and Financial Viability, Tenant Involvement and Empowerment, Home standard, Tenancy standard, Neighbourhood and Community standard and Value for Money standard.

- 3.7 BHP have made plans to submit a formal an application for registration as a Registered Provider for the TSA to consider at its assessment committee on 3 March 2011. If the TSA is minded to approve BHP's application for Registered Provider status, such approval will only be granted subject to receipt of a certified copy of the changes to BHP's Memorandum of Association as set out in Appendix A to this report. It should be added that the proposed changes to BHP's Memorandum of Association can only be made once they have been approved by the Council's Executive.
- 3.8 The Registered Provider status and related regulatory compliance as stipulated by the TSA will only apply to BHP's directly owned social rented homes which fall within the definition of low cost rental accommodation as defined in section 69 of the Housing and Regeneration Act 2008 which is as follows: it is made available for rent, the rent is below the market rate and the accommodation is made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market. These social rented homes include Granville New Homes and new build homes funded with social housing grant at Aldbury Avenue. At present, market rent, intermediate rent and temporary to permanent housing during the phase of temporary accommodation are currently functions that are currently not regulated by the TSA.
- 3.9 It is important that BHP achieves Registered Provider status before April to ensure that it can maximise rental income, and save stamp duty land tax costs for the bulk of the settled homes acquisitions programme which is to be delivered by March 2012. This will improve the cash flow position in the financial model supporting the project. In addition, a grant funding allocation supports the delivery of the new build development of two homes at Ander Close starting on site in March, which is subject to a grant agreement requiring Registered Provider status as a pre-requisite for making grant claims.
- 3.10 The proposed wording changes to the Memorandum of Association do not fundamentally alter the business objectives of BHP, but provide the clarification required by the TSA to meet their regulatory guidance. Activities carried out by BHP are subject to approval by the Council. The Registered Provider application supports the delivery of projects already approved by the Council including the development of new homes, and the settled homes initiative providing temporary to permanent homes for homeless households nominated by the Council.
- 3.11 Details regarding the review relating to the future of BHP and the Council's relationship with BHP are set out in paragraph 5.6 below.

4.0 Financial Implications

- 4.1 BHP has been allocated grant funding for a new social housing development which is subject to grant conditions in the HCA's Grant Agreement requiring

Registered Provider status. Failure to achieve this status will lead to loss of this grant allocation, and prevent BHP from accessing future grant funding.

- 4.2 As a Registered Provider BHP would be able to apply the revised housing benefit subsidy formula for rents relating to temporary housing schemes for the settled homes initiative, which was published on 31st January (circular HB/CTB S1-2011). Rents are to be fixed from 1st April 2011 to 31st March 2013 at the January 2011 Local Housing Allowance rate minus 10% plus £40, which is above the LHA rent caps which apply currently to BHP's status for housing benefit purposes as a private landlord, and are also effective from 1st April 2011.

Table of temporary accommodation rents (LHA -10%+ £40) based on the January LHA rates from 1st April 2011 compared with the rent caps:

Area	1 bed	2 bed	3 bed
Inner North London	£274	£346	£445
Inner West London	£256	£323.50	£395.50
North West London	£195.77	£237.31	£299.61
LHA Caps	£250	£290	£350

Use of the housing benefit subsidy formula will enable BHP to maximise its rental income stream and improve the cash flow position in the financial model.

- 4.3 A non-profit Registered Provider (s115 Housing and Regeneration Act 2008) is exempt from paying SDLT on acquisitions from another RP, local authority or certain other bodies, and on purchases funded by social housing grant. As a Registered Provider, BHP will not be required to pay Stamp Duty Land Tax (SDLT) on the properties it is buying for the settled homes initiative, realising a saving of up to £500k on the programme of acquisitions for tranche 2.

5.0 Legal Implications

- 5.1 The Tenant Services Authority was established under the provisions of the Housing and Regeneration Act 2008 to assume responsibility for the regulation of social housing providers from the Housing Corporation¹. This included maintaining a list of all Registered Providers. As stated in paragraph 3.5 above, all existing Registered Social Landlords and Local Authority providers automatically became Registered Providers with effect from 1st April 2010. Other organisations including ALMOs are required to follow an application process for registration. It is proposed in the Localism Bill that the TSA will be abolished and the regulatory functions of the TSA will be transferred to the Homes and Communities Agency.

¹ The Housing Corporation was replaced by the establishment of the Homes and Communities Agency from 1st December 2008.

- 5.2 BHP is a limited company, without share capital, which operates on a not-for-profit basis. Brent Council is the sole guarantor member. The governance arrangements are set out in the Articles of Association. The Memorandum of Association details the business objectives of the company, which includes constructing new homes, and other activities approved by the Council. The proposed changes BHP's Memorandum of Association require the approval of the Council's Executive. The last time in which the Council's Executive approved changes to BHP's constitution was in November 2007 when it approved changes to BHP's Articles of Association in order to allow changes to the quorum requirements of BHP's Board membership.
- 5.3 In terms of BHP's own Constitution, clause 4 of the Memorandum of Association states that BHP has the power to do anything a natural or corporate person can lawfully do which is necessary or expedient to further its objects unless prohibited by the Memorandum. Clause 3(11) of BHP's Memorandum of Association, it states that the objects of BHP shall include carrying out such activities as Brent Council shall approve.
- 5.4 The Department for Communities and Local Government has confirmed that BHP can own assets and grant tenancies as a landlord without the requirement for further consent from the Secretary of State though this is subject to the Council's approval as required under BHP's constitution. The Council's Executive has previously given approval to BHP developing, and owning homes, and to loan funding to deliver the Settled Homes Initiative. BHP owns properties as a landlord in its own right at Granville New Homes, as approved by the Council's Executive in December 2008 and May 2009. Also, BHP also owns properties with the assistance of grant funding from the Homes and Communities pursuant to tranche 1 of the Settled Homes Initiative, as approved by the Council's Executive in January 2011, and the National Affordable Housing Programme, including the properties at Aldbury Avenue which the Council's Executive approved in November 2008.
- 5.5 In order to meet the requirements for registration BHP must comply with the regulatory guidance set out in the TSA's procedural guidance note dated 25th August 2010. This expects the following requirements to be met:
'The objects clause must:
- refer to "social housing" explicitly
 - satisfy the requirement that any other purposes of the body are connected with and incidental to provision of housing (Condition 3 in section 115 of the Housing and Regeneration Act). The exact wording does not have to be used; that has to be the meaning of other words.
 - refer to not-for-profit status, whether using those exact words or other words which have the same effect

Whether in the objects clause or elsewhere, the articles must:

- refer to non-distribution of assets to members. It should be noted that TSA consent to future changes to this element of the rules is required whether this appears in

the objects clause or not pursuant to of s214 of the Housing and Regeneration Act 2008. That section sets out the circumstances where the consent of the TSA is required when a Registered Provider that is a registered company amends its articles of association.

5.6 BHP has gradually been developing its role as a provider of housing in addition to being a housing management organisation and it is effectively becoming a social landlord in its own right on a piecemeal basis. This has been developing gradually without the Executive yet making any strategic decisions regarding the future direction of BHP and whether BHP should continue its development role as a social landlord in its own right and/or whether BHP should just continue to be the Council's Arms Length Management Organisation (ALMO) and managing the Council's housing stock. These issues will need to be addressed when the Executive makes a decision regarding the future of BHP before the BHP Management Agreement expires on 30 September 2012. An independent review, which has been commissioned by the Council, regarding the future of BHP and the Council's relationship with BHP is currently being carried out by Navigant Consulting and the review report is expected to be presented to the Executive for consideration in the spring of 2011. As set out in paragraph 2.3 of this report, decisions made by the Executive in relation to this report will not prejudice any decisions or actions which the Executive may wish to take regarding BHP and the Council's relationship with BHP after the review has been carried out by Navigant Consulting.

6.0 Diversity Implications

6.0 None directly.

Background Papers

ALMO Scheme File
GLA SHI Scheme Bid File & Guidance Notes
ALMO SHI Scheme Reports (June 2007, February 2008, January 2010 and February 2011)

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