



Cabinet
16 January 2017

**Report from the Strategic Director,
Community Wellbeing**

For Action

Wards affected:
Barnhill, Wembley Central
Brondesbury Park
Willesden, Kenton, Stonebridge

**Housing Tenancy Conversions –
Update and 2017/18 Conversions**

Appendix 1 is not for publication as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)"

1.0 Summary

- 1.1 The council's Housing Private Finance Initiative (PFI) project provides 364 units of Temporary Accommodation (TA) for homeless households and 20 units of residential care accommodation through contractual arrangements running until 2028. However, the financial viability of the project has been affected adversely by a number of external factors including the Government's welfare reforms.
- 1.2 In January 2016, as part of a strategy to reduce the projected deficit in the project, Cabinet agreed to convert up to 122 TA units to Discounted Market Rent tenancies during the current year. All 122 tenancy conversions are due to be completed by March 2017 and customer feedback has been generally positive.
- 1.3 Under the terms of the PFI contract the maximum rent that may be charged in respect of a Temporary Accommodation unit is the maximum Housing Benefit payable for that property. The Government has announced that, from April 2017, the Temporary Accommodation Management Fee will be removed from Housing Benefit subsidy and an equivalent fund will be set up from the Department for Communities and Local Government (DCLG).
- 1.4 The council is therefore required to reduce the rents for all remaining TA units within the PFI, by £40 per week from 1 April. Rent increases will be applicable to some Discounted Market Rent properties from April 2017.

- 1.5 The report proposes to convert a further 122 TA units to alternative tenures during 2017/18, of which at least 72 properties will be let at Affordable Rents and the balance at Discounted Market Rents. It is also anticipated that all remaining TA units, as at March 2018, will be converted to Discounted Market Rent during 2018/19.
- 1.6 This proposal, and allowances in the council's medium term financial strategy, will reduce the projected deficit to £2.0m. As a result of changes made to the PFI contract in April 2015, the council will be able to recover up to £2.0m or 50% of the increase in value resulting from 158 affordable units being secured as Affordable Rented instead of Social Rented units at the end of the contract. It is anticipated this will reduce the overall deficit to nil by 2028. However, if the remaining conversions do not take place, the removal of TAMF from Housing Benefit subsidy will increase the projected deficit to £6.1m.
- 1.7 It was always intended to convert a proportion of the PFI homes to different tenancy types in order to provide more settled accommodation for current tenants. The proposal in this report represents an acceleration of this approach and the expectation is that the majority of the 122 households in the second tranche of conversions will transfer from TA to Affordable Rent or Discounted Market Rent tenancies, and remain in their current homes.
- 1.8 One of the council's housing priorities is to achieve a reduction in the use of Temporary Accommodation. In this context conversion of TA units, provided through the PFI, to Affordable Rent and Discounted Market Rent properties is positive. It provides an opportunity for households to access more settled accommodation in Brent, without needing to move home, and reduces the council's reliance on long-term use of Temporary Accommodation.

2.0 Recommendations

Cabinet is asked to:

- 2.1 Note the £40 per week rent reduction for Temporary Accommodation units which are included in the PFI contract from April 2017.
- 2.2 Approve the variable rent increases for Discounted Market Rent units which are included in the PFI contract from April 2017.
- 2.3 Note the current position with regard to the first tranche of tenancy conversions, to be completed by March 2017.
- 2.4 Agree during 2017/18 to convert up to 122 units of Temporary Accommodation which are included in the PFI contract to alternative tenures, of which at least 72 properties shall be let as Affordable Rent equivalent units and the balance shall be Discounted Market Rent units, as set out in the report
- 2.5 Delegate authority to the Strategic Director Community Wellbeing, in consultation with the Chief Finance Officer and the Chief Legal Officer, to issue to Brent Coefficient Limited a schedule setting out the units to be allocated as Affordable Rent/Discounted Market Rent units in accordance with the PFI contract.

3.0 Detail

Background

- 3.1 The Brent Non-HRA Housing PFI contract was entered into between the council and Brent Coefficient Limited (BCE), a subsidiary of Hyde Housing Group (Hyde), in December 2008 for Phase 1, which was extended in July 2010 to include Phase 2 and the contract ends in December 2028. The project provided for the construction between 2010 and 2012 of 364 units of accommodation by BCE, and an additional 20 units of residential care accommodation, which are owned by the council. All units have been constructed and the project is in its service operational phase.
- 3.2 The 364 units were originally intended to be available for use as Temporary Accommodation (TA) by Brent in order to assist in meeting its statutory duty to provide accommodation to homeless households. In November 2014 Cabinet was advised of a projected deficit over the remaining contract term, arising as a result of the Government's welfare reforms. In particular the Housing Benefit subsidy limitations for TA mean that rental income to fund the required payments to BCE has not risen as assumed in the contractual financial model and, over the remaining course of the contract, this is projected to fall substantially short.
- 3.3 In order to remedy the above position, in November 2014 Cabinet agreed to make a number of changes to the PFI contract, and the revised contract was entered into in April 2015. The council is now entitled to propose changes to the tenure of up to 122 PFI units in any contract year and to allocate each 'converted' unit as either an Affordable Rent equivalent unit or a Discounted Market Rent (DMR) unit, or to convert it back to Temporary Accommodation. This provides the council with flexibility over the way in which the 364 units are used and the rents that can be charged, in order to optimise the financial performance of the project while meeting housing need.
- 3.4 The council is required, contractually, to convert a minimum of 72 properties from TA to Affordable Rent units by no later than April 2018, for a period of not less than five years. Affordable Rents may be charged at up to 80% of local market rents for one-bedroom units; 70% for two-bedroom units; and 50% for three-bedroom plus units or Local Housing Allowance (LHA) rates, whichever is lower. Discounted Market Rents are chargeable up to 80% of prevailing market rents, not limited to LHA.

Tenancy Conversions to Discounted Market Rent during 2016/17

- 3.5 In January 2016 Cabinet agreed to convert up to 122 units of Temporary Accommodation to DMR properties during the current year. It was recognised that, if units were let at Discounted Market Rents, they may need to be used to meet housing needs in a more targeted way, primarily for those in employment or who were otherwise exempt from the overall benefit cap (OBC).
- 3.6 Cabinet therefore agreed to prioritise the first 122 properties to be converted to Discounted Market Rent on the following basis. This excluded one-bedroom units as these were intended to be converted to Affordable Rent from 2018:
- Working households

- Other households exempt from the benefit cap including ASC nominees
- Smaller properties by earliest date of homelessness acceptance.

3.7 The process of identifying households to be offered DMR tenancies, in the first year of conversions, has been complex and resource intensive. This is due partly to the need for a formal suitability (i.e. affordability) assessment to be made for each household, and practical issues in obtaining the necessary financial and other information from tenants. While the same issues will apply to future conversions, familiarity with the process should mean it can be completed more efficiently. In order to accommodate slight slippage in the tenancy conversion programme, BCE and Hyde have agreed for the annual conversions to be completed within each financial year, rather than contract years.

3.8 To date 98 units, including void properties, have been agreed between the council and BCE/Hyde for conversion to Discounted Market Rent. Of these properties, 25 households have entered into DMR tenancy agreements and the remaining 73 are scheduled to be signed up by February 2017. Suitability assessments are ongoing to identify 24 further households to be offered and enter into DMR tenancies by March 2017. It is therefore anticipated that the maximum 122 tenancy conversions will be achieved for 2016/17, and overall customer feedback has been positive.

Housing Benefit Changes from April 2017 and Current Financial Position

3.9 Under the terms of the PFI contract between the council and BCE, the maximum rent (including eligible service charge) that may be charged in respect of a Temporary Accommodation unit is the maximum Housing Benefit payable for that property. Self-contained TA currently attracts Housing Benefit at 90% of the January 2011 LHA rate for the property size, plus a Temporary Accommodation Management Fee (TAMF) of £40 per week. This is the level at which the PFI rents for TA units are currently set.

3.10 The Government has announced that, from April 2017, TAMF will be removed from Housing Benefit subsidy and an equivalent fund will be paid as grant to the council by the Department for Communities and Local Government from that point. The council is therefore required, contractually, to reduce the rents for all remaining TA units within the PFI, by £40 per week from 1 April. The revised rent figures are shown within the schedule at Appendix 1, for Cabinet's approval.

3.11 The baseline financial position reported to Cabinet in January 2016 reflected the 72 TA properties which are required to be changed to Affordable Rent units by April 2018. The report also assumed that the scheme would mitigate the deficit entirely if all the planned conversions were actioned and that the council made provision for growth in its medium term financial strategy. However, if the remaining conversions do not take place, the removal of TAMF from Housing Benefit subsidy for the remaining 242 units of Temporary Accommodation will increase the projected deficit to £6.1m.

Rent Increases for Discounted Market Rent Units from April 2017

3.12 Discounted Market Rents are intended to increase in line with the rents of equivalent private sector properties in the same area. This is necessary in order

to reduce the projected financial deficit by the end of the contract. DMR rents are variable by nature, as they reflect the specific local rental market for each unit, rather than being set on a portfolio-wide basis.

- 3.13 Those properties converted to DMR by 31 March will be subject to a rent increase from 1 April 2017. Independent rental valuation reports have been provided by DVS (the District Valuer), and the rent increase will be the difference between the February 2016 and November 2016 DVS rents for equivalent units.
- 3.14 The Discounted Market Rent for 148 units has increased, by a maximum of £20 per week, and for 216 units the DMR rent has not changed. The overall average rent increase is 1.3% for nine months. This reflects both the variable nature of DMR rents and a relative slowing of rental markets due to recent financial and political factors. The Discounted Market Rents to be charged from 1 April 2017, for those properties let on DMR tenancies at 31 March, are shown within the schedule at Appendix 1, for Cabinet's approval.

Proposed Tenancy Conversions for 2017/18

- 3.15 Removal of the Temporary Accommodation Management Fee from Housing Benefit subsidy provides an immediate financial incentive for the council to convert the remaining TA units to alternative tenures as quickly as possible – this warrants re-consideration of the council's approach to tenancy conversions. It is recommended that Cabinet agrees to convert up to a further 122 properties during 2017/18. Even with familiarity with the conversion process this will take several months to complete. The proposal contained within this report is therefore intended to accelerate the conversion rate, in order to minimise the impact of the removal of TAMF.
- 3.16 It was originally intended to reserve one-bedroom properties for conversion to Affordable Rent units. This was on the basis that the Affordable Rent for a one-bedroom unit would be set at a higher percentage (80%) of market rent than for two-bedroom (70%) or three-bedroom plus (50%) properties, but not more than LHA. PFI units are excluded from the 1% rent reduction, although they will be impacted by the LHA freeze and reduced indexation thereafter. It is considered likely that the Affordable Rent for one-bedroom units would be affordable to the majority of current tenants of those properties, and these conversions could be completed relatively quickly, with the tenants staying in their homes.
- 3.17 It is therefore recommended to bring forward the conversion of at least 72 and up to all 76 one-bedroom PFI properties, including voids, to Affordable Rent during 2017/18. This will be positive for deficit reduction following the removal of TAMF from Housing Benefit subsidy. It will also ensure that the contractual requirement to let at least 72 units at Affordable Rents by April 2018 is met.
- 3.18 Cabinet has agreed to prioritise properties occupied by working households for conversion to DMR, as they are less likely to be affected by the overall benefit cap. It is anticipated that the majority of OBC exempt households (excluding tenants of one-bedroom units) will have been offered DMR tenancies by March 2017, meaning there will be a minority of remaining tenants for whom DMR rents are affordable; although the numbers cannot be determined until formal suitability assessments have been made. It is proposed to offer DMR tenancies

to those remaining tenants for whom the rents are affordable, during 2017/18, and to re-let void two-bedroom plus properties as DMR units.

- 3.19 It was previously reported that DMR units fall within the definition of “Social Housing” and are currently exempt from LHA rates in respect of Housing Benefit, although households are still subject to the overall benefit cap unless they are exempt from the cap. In November 2015 the Government announced proposals to extend the application of LHA rates to Social Housing, for all new tenancies granted after 31 March 2016. It was originally intended that Housing Benefit entitlement would change from April 2018 onwards, but the implementation date has since been deferred until 1 April 2019. At that point in time an assessment will be made as to whether the rent remains affordable to existing households and, if not, alternative accommodation will be provided.
- 3.20 Once any Housing Benefit claimants move on to Universal Credit, the housing element within Universal Credit will be based on the LHA rate. This will be implemented as part of managed migration of existing claims from 2018 to 2021 or sooner if the claimant needs to make a new claim. The proposed conversion of PFI units to DMR Social Housing is therefore an appropriate short to medium-term strategy to reduce the projected deficit while maximising affordability.
- 3.21 In order to complete the final conversion of all 364 PFI units to alternative tenures, it will be necessary to provide alternative accommodation for those households for whom the new rents are not affordable. This is likely to be a resource intensive process and may, in some cases, require Hyde to undertake possession proceedings. It is recommended that these conversions are deferred until 2018/19, in order to allow time for implementation of a decant strategy. This will be for separate approval by Cabinet at a future date.
- 3.22 In summary it is proposed that the tenancy conversions for 2017/18 are prioritised as follows:
- One-bedroom properties – at least 72 and up to all 76 units, including voids, converted to Affordable Rent
 - Two-bedroom plus properties – up to 50 units occupied by working and other households exempt from the benefit cap converted to Discounted Market Rent tenancies, and voids re-let as DMR.
- 3.23 Assuming that the first 122 conversions can be achieved by 31 March 2017, and further conversions are undertaken in future years as set out in the preceding paragraphs, the estimated impact is to reduce the projected deficit at contract expiry to nil.
- 3.24 The financial modelling is sensitive to the basis for calculating market rent, from which both Affordable and Discounted Market Rents are derived (by applying the 80% factor). The financial model outputs summarised in this report are based on market rents taken from GLA rent map data for September 2016, using median rent figures by postcode.

Impact on Current Tenants

- 3.25 The PFI project faces financial challenges, arising from a number of external factors, resulting in a projected deficit. The April 2015 contract changes provide

greater flexibility over the future use of the TA units. In considering the implementation of these changes officers have been mindful of the need to minimise the impact on current residents, while recognising the council's fiduciary duty to reduce the deficit.

- 3.26 It was always intended to convert a proportion of the PFI homes to different tenancy types in order to provide more settled accommodation for current tenants and for the council to discharge its homelessness duty accordingly. The proposal in this report represents an acceleration of this approach, for the second year, which is generally positive. The expectation is that the majority of the 122 households in the second tranche of conversions will transfer from TA to either Affordable Rent or Discounted Market Rent tenancies, remaining in their current homes with no disruption to their education or employment arrangements.
- 3.27 Prior to the offer of an Affordable Rent or DMR tenancy being made, officers will assess the suitability of the proposed offer, including the affordability of the property to the tenant. There are safeguards contained within the PFI contract and homelessness legislation if either BCE/Hyde or the tenant considers the offer of an alternative tenancy to be unsuitable. The tenant will be able to request a statutory review of any decision that an offer of accommodation is suitable.
- 3.28 If the outcome of the assessment process is that a property is not suitable to be offered as an Affordable Rent or Discounted Market Rent unit, for example if it is unaffordable to the current tenant, the council will work with that household to provide alternative accommodation. As indicated above this is not expected to affect a significant number of households in the second year of conversions, and a decant strategy will be implemented for year three. Ultimately, in the event of a tenant refusing a suitable offer, either of an Affordable Rent/DMR tenancy or alternative accommodation, they would be required to make their own arrangements for housing.
- 3.29 Affordable Rent and Discounted Market Rent properties will be let under Assured Shorthold fixed-term tenancies, for five and two years respectively. The council's policy position with regard to the renewal of tenancies at the end of the fixed-term period is being reviewed as part of a review of the council's Housing Strategy, for future consideration by Cabinet.

Link to Housing Priorities

- 3.30 One of the council's housing priorities is to significantly reduce levels of homelessness in the Borough and the use of Temporary Accommodation. While homeless applications and acceptances have been increasing across London, the position in Brent has improved. In April 2014 the total of 3,300 households in TA was the highest in England, and by November 2016 this had reduced to 2,800 households.
- 3.31 As noted above, Temporary Accommodation use has been reduced, but remains a priority – to achieve a reduction to the London average by 2019. The council's Temporary Accommodation Reform Plan has put in place proposals to:

- Establish a council-owned company which will invest in buying and developing a long-term portfolio of properties, which can be let to homeless households at affordable (Local Housing Allowance) rates
- Bring forward the redevelopment of Knowles House and a site on London Road to deliver improved, self-contained TA for emergency use
- Deliver an improved approach to helping households gain or keep employment and help them settle successfully into their new homes
- Improve the way the council procures private rented accommodation through external commissioning and through a pilot project with other West London boroughs
- Aim to eliminate the use of Bed & Breakfast and hostel accommodation with shared facilities for Temporary Accommodation, to house people closer to Brent where possible and deliver revenue savings to the council.

3.32 In the above context conversion of TA units, provided through the PFI, to Affordable Rent and Discounted Market Rent properties is positive. It provides an opportunity for households to access more settled accommodation in Brent, without needing to move home, and reduces the council's reliance on long-term use of Temporary Accommodation.

4.0 Financial Implications

4.1 To mitigate the impact of the deficit this report proposes to convert a further 122 TA units, which is the maximum allowed within the contract in any year, to Affordable Rent and Discounted Market Rent by 31 March 2018. It is also anticipated that all remaining TA units, as at March 2018, will be converted to Discounted Market Rent during 2018/19. This proposal, and allowances of £0.9m over three years in the council's medium term financial strategy, will reduce the projected deficit to £2.0m.

4.2 As part of the contract changes made in April 2015, the minimum number of 158 units of TA, which were previously required to be converted to Social Rent at the end of the contract, will now become Affordable Rent units. The council will be able to recover up to £2.0m or 50% of the increase in value resulting from the 158 affordable units being secured as Affordable Rented instead of Social Rented units. It is anticipated this will reduce the overall deficit to nil by 2028. This projection is dependent on a number of volatile factors including future market rent, rent collection rate and interest rates; a financial risk that should be noted.

4.3 The 2015/16 Spending Review and Autumn Statement announced that funding of the Temporary Accommodation Management Fee will be devolved to local authorities from 2017/18, giving them more freedom and flexibility in how they use this funding. Current levels of funding will be maintained and councils will together receive an additional £10m per year nationally. The DCLG will set out the precise detail of how the new funding will be distributed later in 2016/17.

4.4 It is estimated that Brent's devolved Temporary Accommodation Management Fee will amount to c. £5.0m. This is based on devolution of the £40 per week management fee for an estimated 2,500 eligible TA properties per annum. It is

assumed that the impact of the removal of TAMF from Housing Benefit is cost neutral to the council for at least the first three years. This is because any deficit will be offset by grant from central government. However, without the grant, the removal of TAMF from Housing Benefit subsidy for the remaining 242 units of Temporary Accommodation will increase the projected deficit to £6.1m.

5.0 Legal Implications

- 5.1 Under the terms of the revised PFI contract the council is entitled to allocate a dwelling as either an Affordable Rent Equivalent Dwelling, A Discounted Market Rent Dwelling and/or as Temporary Housing. The council is only entitled to propose a maximum of 122 changes to tenure in any contract year, which is why the report proposes that 122 dwellings are converted from Temporary Housing to Discounted Market Rent Dwellings for 2017/18.
- 5.2 Dwellings are regarded as "Social Housing" if they fall within the definition of "Social Housing" in the Housing and Regeneration Act 2008. Essentially, for rented dwellings, this requires two tests to be satisfied, namely (i) that the rent is below market rent and (ii) that the property is made available for letting 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.
- 5.3 The Dwellings let under this PFI contract are all let by Hyde Housing Association as landlord. As a Registered Provider, Hyde is bound by the terms of the Rent Standard for all Social Housing. Even if the PFI dwellings are regarded as Social Housing they are, nonetheless, currently exempt from the Rent Standard. The PFI dwellings are exempt from the requirement to reduce rents by 1% as set out in the Welfare Reform and Work Act 2016.
- 5.4 From April 2017, the Temporary Accommodation Management Fee will be removed from Housing Benefit subsidy and an equivalent fund will be set up by the Department for Communities and Local Government from April 2017.
- 5.5 It is not envisaged that the recommendations in this report will require any further variations to the PFI contractual documentation.

6.0 Diversity Implications

- 6.1 An Equality Analysis was undertaken to inform the previous Cabinet report, in January 2016, and the details have not changed materially for the current proposal.
- 6.2 Where Temporary Accommodation units are converted to Discounted Market Rents this will impact on the current tenants, either by increasing the rents payable over a period of time or, if the rents are considered to be unaffordable, in requiring them to move to other accommodation, which may be permanent or Temporary Accommodation. Some of these households will have Protected Characteristics in respect of the Equality Act 2008. For some households the impact will be positive, for some negative and others broadly neutral.
- 6.3 There is the potential for households with protected characteristics to be disproportionality affected by these changes as an unintentional consequence of the way in which units are selected for conversion to DMR. However, with the exception of the minimum 72 units that are required to be converted to

Affordable Rent, all remaining units are likely to be converted to Discounted Market Rent over a three year period.

- 6.4 This proposal is needed in order to ensure that the council meets its fiduciary duty in respect of the PFI contract, to reduce the projected deficit. It is important to note that the intention was always to convert a proportion of the TA units to provide more settled accommodation for current tenants. What has changed is the nature of the tenancies to be offered.

7.0 Staffing/Accommodation Implications

- 7.1 There are no immediate staffing or accommodation issues arising from this report.

Background Papers

Appendix 1 – Property and Rents Schedule 2017/18

Cabinet report, 20 January 2016 – Tenancy Conversions

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