



**Cabinet**  
13 February 2017

**Report from the Director Adult Social  
Care**

For Action

Wards affected: ALL

**NAIL Programme Accommodation and Financial Mitigation  
Plan**

**1.0 Summary**

- 1.1 The NAIL (New Accommodation for Independent Living) Programme is a major cross-Council strategic initiative to provide high quality accommodation for a range of vulnerable people which promotes their wellbeing and ability to live independently through good design.
- 1.2 By separating accommodation from care & support costs, the NAIL Programme will deliver significant efficiency savings for Adult Social Care (ASC) budgets, making it the largest savings programme within the Council.
- 1.3 Projected savings to be delivered by the NAIL Programme were mainly based on new-build schemes to provide long-term accommodation. Experience has shown that NAIL has limited control over these projects, particularly those developed by external Registered Provider (RP) partners. Self-development is also an area where the Council is still growing its' expertise.
- 1.4 In light of challenges in the market, the Council has taken the decision to reshape and broaden the NAIL programme to include elements of investment and self development. This has the added benefit of allowing the NAIL programme to work more closely with housing to support delivery of identified strategic housing requirements for the Council as a whole, as well as to bring forward the delivery of NAIL units to meet specific gaps in the current programme. To fully meet ASC's current accommodation requirements for all groups, and provide a more balanced and sustainable savings profile an increased number of short- medium term units will be required.
- 1.5 To meet needs and deliver significant savings for ASC for 2017/18 the Council will require access to additional properties suitable for occupation by learning disabled (LD) and mental health (MH) customers. Given the availability of housing stock within Brent this will prove challenging, and significant capital investment will be required.

## **2.0 Recommendations**

### **Cabinet is asked to:**

- 2.1 Approve the use of 3 year leases to secure 3 properties for the use of 24 NAIL customers – a total cost of £327,500 per annum.
- 2.2 Approve a budget of £19.7M for the purchase and modification of private residential properties to provide an additional 90 units of accommodation for NAIL customers.
- 2.3 Approve the long-term use of the supported housing properties at 73 & 80 Wembley Park Drive, with a budget of £0.88M to refurbish the buildings to a standard suitable for long-term occupation by NAIL customers.
- 2.5 Asked to note that the above investment will generate savings of £2.6m p.a., bring the achievement of anticipated NAIL savings forward, and support Brent Council's strategic vision for residents to remain independent in a home of their own and in the community for as long as possible, as evidence shows us that those who do, live longer, happier and healthier lives.

## **3.0 Detail**

### **Background**

- 3.1 The NAIL Programme is a major cross-Council initiative which was introduced to develop a range of alternatives to residential care for those Brent customers with high care and support needs.

The programme aspires to provide high quality accommodation which incorporates best design practice, and promotes the wellbeing of our customers. This style of accommodation and support gives a more personal service and enables adults to have greater control over their home and care which is in line with central government policy and best practice.

The NAIL Programme commenced in 2014, and the first scheme included in the programme was Willow House Extra Care Scheme which consisted of 40 flats and several communal areas for tenants to socialise in. It was developed by Network Homes, and opened in June 2015. To date Willow House has delivered approximately £1.4M in efficiency savings for Adult Social Care (ASC). The first NAIL property to be developed by Brent Housing Partnership (BHP) at Salmon Street (6 units) was handed over at the end of November 2016.

NAIL programme accommodation is generally self-contained, or more homely house-share type accommodation which as a minimum provides en-suite bathroom facilities. Accommodation is generally of a more domestic nature than that offered by care homes, and meets the conditions for the granting of a tenancy. This provides customers with improved security of tenure in line with the majority of other social landlord tenants.

3.2 Care home costs include both accommodation and ‘care and support’. When customers are placed in care home settings ASC pay a single fee for the placement which includes the food and accommodation or ‘hotel’ costs. The accommodation/‘hotel’ costs are an integral part of placement fees, and not eligible for housing benefit due to the legal basis by which the accommodation is occupied.

3.3 NAIL programme accommodation generates efficiency savings as ASC only pays for the ‘care and support’ element of the service which is our statutory obligation, leaving the individual to claim housing benefit for the accommodation costs. This also entitles them to claim benefits (which they are not eligible for in residential care) to enable them to pay for social activities, utilities, food etc.

This represents an average weekly saving of £332 per person, compared to accommodation provided in a care setting.

3.5 Of the 529 units in the original NAIL Programme, 387 are planned to be delivered by external partner agencies – almost exclusively RPs, the remainder being developed by BHP or Brent Council’s Property Services.

3.6 In 2016/17 the programme was projected to deliver cumulative savings of approximately £4.7M, with £1.7M of this coming from the new 99 unit Extra Care scheme being developed by Asra (Visram House).

3.7 Due to a range of factors summarised below at 3.9 & 3.10, there has been a considerable shortfall in the planned savings to be delivered by the NAIL Programme for 2016/17 – 2018/19.

**Current Position**

3.8 Current adjusted NAIL Programme savings against targets

	15/16	16/17	17/18	18/19	19/20
Cumulative Savings Target (£M)	0.6	4.7	6.1	7.5	7.5
Cumulative planned (£M)	0.6	1.7	3.6	6.5	8.7
<b>Variance (-ve shortfall) (£M)</b>	<b>-</b>	<b>-3.0</b>	<b>-2.5</b>	<b>-1.0</b>	<b>1.2</b>

The table above assumes that all units in the current programme will delivered as per the adjusted schedule.

## Analysis of NAIL Programme delivery issues

- 3.9 A delay of approximately one year in the handover by Asra of Visram House has been the main cause of variance from the planned savings target – a total shortfall to date of £1.7M in cumulative savings. The reason for the delay, which remains unresolved, is the failure to provide suitable electrical connections for the site, and ongoing legal issues about the siting of the sub-station and routing of cables across neighbouring land.

The council has yet to receive an adequate explanation of why these issues were not foreseen. The impression is that the issue has not been well-handled, and despite weekly requests we are yet to receive a firm handover date – the current estimated date is March 2017.

The delays with Visram House are in many ways particular to this development. This is by far the largest and most complex scheme developed to date, so the effect of delays on the NAIL Programme is magnified. The delay is largely outside the control of the programme given that there is no enforceable contractual link with the developer Asra.

- 3.10 Following from the development of Visram House, there are a number of smaller schemes currently being developed for the NAIL Programme by BHP. Most of these have slipped by between 6 – 9 months, which has further affected the NAIL savings profile. The main reasons identified for the delays are as follows:

- **Contractor Procurement:** there have been a number of delays in the procurement due to insufficient bidders for relatively small contracts, a need to carry out further due diligence checks, and delays in posting tendering documentation.
- **Public consultation:** several of the schemes were subject to negative responses from neighbours and stakeholders that have in some cases required re-design and further meetings to address concerns – consequently consultation periods have needed to be extended. NAIL schemes may cause particular anxiety to local residents due to misconceptions about services and service-users.
- **Planning:** schemes have attracted high levels of detailed scrutiny and requests for clarification from Planning, and sometimes long delays in going through the planning process.
- **Reconfiguration of planned schemes:** this is mainly to allow for sufficient communal space and on-site offices for 24hr staffing, but in some cases is due to RPs changing the scheme configurations to add or detract planned units to support the financial business case. Scheme financial viability is particularly difficult to confirm at present due to shifts and changes in legislation around benefits and the Local Housing Allowance and its application to supported living schemes.

## **Summarised analysis of NAIL Programme issues**

3.11 Summarised learning to date, and the consequences for planned savings targets are as follows:

- The Programme is over-reliant on new-build developments, which tend to be based on contractors' overly-optimistic target dates and subject to a high number of variables and risks which can cause delays. Whilst overall planned savings are likely to be achieved, these will mainly be realised from 2018/19 onwards.
- Planning used to inform savings projections has sometimes been overly optimistic and included schemes that did not progress beyond the planning stage.
- The majority of units are being delivered by RP partners, which the Council has little or no control over, and are subject to the development issues above.
- The current programme provides insufficient accommodation for customers with learning disabilities until larger schemes are completed from 2018/19 onwards, and no accommodation for customers with mental health support needs.
- The NAIL Programme is complex and dependent on a number of mechanisms and processes, including changes in housing and benefits legislation, the implications of which are not yet entirely clear.

To reshape the savings profile options have been explored to achieve short-medium term savings detailed below, including leasing private rented properties, repurposing of existing RP and Council-owned properties, acquisition of private properties, repurposing of PFI properties originally intended for Temporary Accommodation.

### **Forward Strategy**

3.12 Based on the above factors and in conjunction with other cross council departments, the Council has determined that re-focusing and reshaping the NAIL programme would both allow for earlier delivery of NAIL accommodation, thus the earlier delivery of savings, and would allow the Council to maximise opportunities for delivery of a number of strategic housing priorities. For example, direct delivery of a proposed scheme at Central Middlesex Hospital provides the opportunity to develop a scheme which both provides for people with care and support needs, but may also offer the opportunity to develop key worker housing. The viability of this is being explored and a further paper relating directly to this scheme will be brought to cabinet for approval when all options have been explored.

In the short-medium term, the NAIL Team has evaluated a range of accommodation options to deliver savings and to mitigate the shortfall in projected savings and approval for these options is sought in this report.

### 3.13 Options for providing additional capacity are outlined below, listed in order of availability.

- **Private Rented Leasing** is the most expensive option. However, they offer a quick solution while more permanent purpose-built properties are in development. Three suitable properties have been identified.
- **Repurposed Supporting People Schemes** offer the opportunity of using poorly used or vacant properties owned by the Council and RPs. Four suitable properties being used by CNWL for SP services, and being decommissioned have been identified. Two of these properties would only require cosmetic works and could go live quickly. Agreement with the owning RPs expected to be finalised soon.

Two Council-owned properties in Wembley Park Drive present an excellent opportunity for a linked service. These properties are currently in poor condition, and with investment in significant internal remodelling their long-term usability could be greatly enhanced.

- **Private Sector Acquisitions** offer an effective option for LD/MH customers in particular. Properties could potentially be brought into use relatively quickly as compared to building new schemes. The properties would be an asset that the Council can re-use should they become surplus to NAIL requirements. Ownership also allows for remodelling of the properties to improve accessibility. Two suitable private sector properties available for purchase have been identified so far.

The options listed are evaluated in detail below.

### 3.14 Private Rented Leasing

Private rented schemes were identified and included in the savings profile for 2016-17, but no arrangements were in place to deliver these units. Leases are currently being negotiated by Property Services, and delegated authority is being sought to secure these properties which require a quick turn around in a fast moving property market.

It is proposed these properties are leased for 3 years. Property has completed appraisals, and Housing Benefit has confirmed that Non HRA Rent Rebate will cover the level of rent required to service leasing costs.

These properties are cost-neutral and offer a quick short-medium term solution whilst more permanent purpose-built properties are in development.

Risk/issue description (incl. impact)	Planned mitigation or resolution	Owner
<p>Suitable properties identified are mid-high level private market rent, restrictions/changes to rents and Housing Benefit could reduce planned savings</p>	<ul style="list-style-type: none"> <li>• Housing management and support to be provided by Registered Provider so accommodation qualifies as 'Exempt Accommodation' and not subject to benefit caps.</li> <li>• Draft rent/charges agreed by Housing Benefit.</li> <li>• Specialist Supported Housing HB consultant advising on best arrangements to maximise income and anticipate changes to benefit regulations</li> </ul>	<p>Jon Burgoyne – NAIL Programme Manager</p>
<p>Difficulties decanting NAIL customers at end of lease, with accompanying court costs and lease penalties</p>	<ul style="list-style-type: none"> <li>• Quality alternative accommodation will be provided for all occupants with planned resettlement support.</li> <li>• All tenants will be served with S.21 Notice Requiring Possession during the final year of the lease.</li> </ul>	<p>Ian Buchan - Lead Commissioning Manager ASC</p>

### 3.15 Repurposed Supporting People Schemes

Four suitable properties currently being used by CNWL for Supporting People services have been identified as potentially available. Once vacant, two of these properties (Hanover Road and Pound Lane) would only require internal (mainly cosmetic) works and could go live relatively quickly. Agreement with the owning RPs about use is expected to be finalised before Christmas.

Two properties opposite each other in Wembley Park Drive are Council-owned and present an excellent opportunity for a linked service. These properties are currently in poor condition, and with investment in significant internal remodelling their long-term usability could be greatly enhanced. A report has been sent to Property requesting use of these properties. Remodelling the properties will be significantly more straightforward and quicker than building new properties and reduce pressure on limited land available. This makes this a more immediate solution to meeting the shortfalls in savings generated by the NAIL Programme.

Identifying appropriate move-on accommodation for current occupants of these properties is a pre-requisite for their use, and those occupants no longer requiring support will be assisted to access private rented accommodation, those assessed as needing support will be transferred to appropriate supported housing.

Risk/issue description (incl. impact)	Planned mitigation or resolution	Owner
Difficulties/delays in moving-on current occupants	<ul style="list-style-type: none"> <li>• Access to move-on accommodation via Housing Needs</li> <li>• Some occupants suitable for leased properties being acquired</li> </ul>	Jon Burgoyne – NAIL Programme Manager
Pound Lane occupants vulnerable due to interaction with residents in neighbouring hostel	<ul style="list-style-type: none"> <li>• Joined-up housing management will be provided by St Mungos who also provide housing management at the hostel</li> <li>• Joined-up support contract with same support provider for hostel and flats</li> <li>• Hostel equipped with CCTV to monitor entrances/exits</li> </ul>	Jon Burgoyne – NAIL Programme Manager
Liability for void costs due under nominations agreements	<ul style="list-style-type: none"> <li>• High level of need and undersupply of accommodation accessible to ASC – extensive waiting lists</li> <li>• Needs of client groups to be carefully mapped, with mobilisation team including Social Workers attached to NAIL</li> </ul>	Ian Buchan - Lead Commissioning Manager ASC

### 3.13 Private Sector Acquisitions

Two suitable private sector properties available for purchase have been identified. They offer good quality self-contained studio-type accommodation with additional communal areas. Both are recent good quality conversions in suitable residential areas, and require minimal further investment. They are currently being appraised by Property.

Properties of this type offer an effective option for LD/MH customers in particular. Properties could potentially be brought into use relatively quickly as compared to building new schemes. The properties would be an asset that the Council can re-use should they become surplus to NAIL requirements. Ownership also allows for remodelling of the properties to improve accessibility.

To meet the identified shortfall in units from 2017/18 onwards we propose that approval is sought to acquire a further 80 units (C.16 properties). Securing this number of suitable properties within a short period will be a considerable challenge but we believe will be achievable. The PRS Portfolio Acquisitions Programme have been asked to assist in identifying suitable properties as they have an established process in place, and also private agents can be approached on a reasonable commission basis.

Risk/issue description (incl. impact)	Planned mitigation or resolution	Owner
Delays in identifying suitable properties at an acceptable price	<ul style="list-style-type: none"> <li>• Funding included in Cabinet paper to provide additional staffing within Property dedicated to NAIL to identify properties</li> <li>• SLA to be agreed with Property with clear targets/timescales</li> <li>• Experience and knowledge from established PRS Acquisitions Programme to inform planning</li> </ul>	Jon Burgoyne – NAIL Programme Manager
Building layout/accessibility may limit customer suitability	<ul style="list-style-type: none"> <li>• Budget request from Cabinet will include adequate provision for remodelling/adaptation works</li> </ul>	Jon Burgoyne – NAIL Programme

	<ul style="list-style-type: none"> <li>Established project team within BHP has gained experience from Salmon Street conversion</li> <li>Building layout less critical for some customer groups eg MH</li> <li>Acquired properties may be an interim option for some customers pending completion of purpose-built schemes but still provide savings and improved accommodation</li> </ul>	Manager
Delays in purchasing/ conveyancing/ Planning (change of use)	<ul style="list-style-type: none"> <li>Funding included in Cabinet paper to provide additional staffing within Property dedicated to NAIL</li> <li>Experienced Salmon Street project team within BHP to advise and assist</li> <li>Services to be outsourced where Council's in-house resources are insufficient</li> </ul>	Jon Burgoyne – NAIL Programme Manager

#### 4.0 Financial Implications

4.1 There are major shortfalls against targets in the planned savings from the NAIL Programme for 2016/17 (-£3.0M) and 2017/18 (-£-2.5M).

Any mitigation measures taken to reduce shortfalls will be too late to have any significant impact in 2016/17, so a £3m overspend will need to be managed by ASC as in year pressure.

4.2 Long-term development plans are forecast to meet the NAIL Programme's long-term targets, however an increased number of short term units are required to provide a more balanced and sustainable savings profile and meet ASC's current accommodation requirements.

To mitigate financial pressures on ASC in 2017/18 and 2018/19 a further 149 units will need to be brought on stream from April 2017.

- 4.3 As detailed at 3.14 repurposed Supporting People schemes can potentially deliver an additional 38 units of accommodation.

14 of these units are located at 2 Council-owned schemes, currently in need of major refurbishment. The two properties are opposite to each other, and present an excellent opportunity for a linked NAIL service with economies of scale for staffing and a reduction in office space required.

Additional adaptations could enable ASC to run a specialist service at the two sites to provide for people with Korsakoff syndrome and physical disabilities, a high needs group the council is currently unable to provide for.

It is proposed that an investment of £880,000 be provided to remodel the properties to the required standard. The remodelled buildings would provide accommodation which would generate £242,000 p.a. in savings for ASC.

- 4.4 The main source of additional units of accommodation would be properties acquired from the private rented sector, and it is proposed that 90 units of accommodation be purchased. This would consist of large houses in residential areas with low levels of ASB and drug-related issues which NAIL customers would be particularly vulnerable to.

Two suitable properties have already been identified which would require minimal adaptation and provide 10 units of accommodation suitable for people with mental health support needs. The two properties would cost a total of £165,000 and generate £172,000 p.a. in savings for ASC.

A further 80 units could be provided through the acquisition of approximately 16 similar properties to the two above, and it is envisaged that 8 of these would require substantial refurbishment to make them suitable to meet the needs of people with learning disabilities in particular. The cost of acquisition is estimated at £15M, with a budget of £3M for conversion/adaptation works (8 @ £350K + £200K contingency). These 80 units would generate £1.38M p.a. in savings for ASC

## Financial modelling for private rented acquisitions

### 4.5 Breakdown of Capital Cost

	<b>Units</b>	<b>£'000s</b>
Braemar Avenue	5	850
Stag Lane	5	800
Refurbishment		880
C 16 additional HMOs @ £900k each	80	14,400
Stamp Duty Land Tax		992
Standard Extra Care Kit Out @£10k/unit		800
Remodelling Works (£200k every other property)		1,600
5% Contingency		120
2 Project managers for 18 months to manage the works		150
<b>TOTAL</b>		<b><u><u>20,592</u></u></b>

- 4.6 It is assumed that for the property purchases that rents are set at £243.18/week, which is the LHA rents for the borough and that this includes £50/week service and maintenance charge. It is further assumed that there is a 2.5% void and bad debt provision charge. Rents would reduce for three years at 1%/year in line with the HB cap and then grow at 1% per year. The rental income and charges may be pessimistic but it was felt best to prudent, given the lack of clarity, as explained in the risks section.
- 4.7 The model makes assumptions of kit out cost for NAIL units of £10k per unit and that every other unit would require £200k of more significant adaptations. It has already been noted that there are existing negotiators to manage the purchasing process but there is still a limited need for on-site project management support.
- 4.8 The scheme would produce an estimated net revenue stream of £1.01m/year on a build cost of £20.592m. This is a net yield of 4.86%.

#### 4.9 Summarised capital requirements and projected savings

Scheme Name	No of units	Projected start date	Projected savings (£M p.a.)
<b>Leased Private Rented Properties</b> <i>(in existing savings profile, not included in totals)</i>			
Park Avenue North	8	Feb 17	0.138
Prout Grove	6	Mar 17	0.103
Forty Lane	11	Feb 17	0.189
<b>Repurposed Supporting People Schemes</b>			
Hanover Road	10	June 17	0.172
Pound Lane	14	April 17	0.242
73 Wembley Park Drive*	7	September 17	0.121
80 Wembley Park Drive*	7	September 17	0.121
<b>Acquired Private Sector Properties</b>			
Braemar Avenue	5	April 17	0.086
Stag Lane	5	April 17	0.086
C 16 additional HMOs to be identified	80	April – June 17	1.380
<b>Total Additional Units</b>	<b>128</b>	<b>Total projected savings p.a.</b>	<b>£2.638M</b>

\* Existing Council owned properties (non-HRA)

#### 4.10 Notes and assumptions in table at 4.9

- Works costs based on Salmon Street conversion – assumed that 50% of acquired properties will require conversion/adaptation: 8 @ £350K + £200K contingency
- Projected start dates are conservative estimates based on experience to date
- Projected savings are based on an average saving agreed with Finance of £332 per customer per week
- Of the repurposed schemes Hanover Road and Pound Lane are owned by Registered Providers and currently used for Supporting People services which are in process of being decommissioned.
- Wembley Park Drive properties are Council-owned and are also being decommissioned. The cost of works is based on extensive remodelling to meet the needs of high needs groups with physical disabilities. The cost of works compared to new build properties is justified by the relatively quick turn around compared to new build which would require land and planning consent/consultation.
- The private sector properties to be acquired are also likely to require remodelling, and again the relatively quick turnaround make this a more attractive and suitable solution compared to new build properties.

- The Braemar Avenue and Stag Lane properties are existing HMOs and would require relatively little work to make them suitable and would quickly provide additional accommodation.

### **Risks to Anticipated Rental Income**

4.11 Risks where rents above LHA rent levels are required to achieve viability relate to changes in benefits legislation, and the future arrangements for supported housing rents as outlined in the Government announcement of 15/9/2016.

4.12 The two options for charging rents above LHA rates, and associated risks are as follows:

- a) **Non-HRA Rent Rebates** – subject to the overall benefit cap which the majority of NAIL customers in receipt of DLA would be exempt from, but from August 2018 new claimants will be subject to Universal Credit, and existing claims will start to be migrated to UC from 2019.

These risks will have little or no effect on leased private properties, but would affect private sector acquisitions. For the private sector acquisitions this may make b) the safer option – which could be implemented from 2018.

- b) **Exempt Accommodation** - leasing properties to a Registered Provider, preferably BHP, to enable them to meet the definition of 'Exempt Accommodation'. In September 2016 the Government announced that: 'costs above the LHA rate will be met by a ring-fenced fund which the Government will devolve to local authorities in England'.

There are currently no details to accompany this announcement, but a Green Paper will be published in Spring 2017. However it is reasonable to assume that this fund will enable the Council to cover a significant amount of any shortfall in rental income.

### **Summarised Financial Implications**

4.13 Leasing 3 properties to support 24 clients for 3 years would cost £0.982m. That would be £262/week/client. As has been confirmed for existing clients in leased properties till 2020, Housing Benefit should cover the full weekly cost including the service charge. As it covers the cost and supports the £332/week/client savings in Adult Social Care, it is financially beneficial to the Council.

4.14 There is a total required budget of £20.6m for the capital works. Other costs would met within existing budgets. The net yield of 4.86% is investment grade, would be significantly more than the interest charge (PWL B est. 2.92%) and would pay back in 36 years. This is lower than the Council's standard payback period but would enable the generation of the other £1.8m Adult Social Care savings, based on 104 units. If the accommodation was considered to meet the Exempt status or elements of the charge were

considered to be recoverable through Housing Benefit, then the payback period might be less than 30 years.

- 4.15 The bottom line is that this scheme would produce income generating assets, which would eventually repay the underlying principal, while supporting the delivery of Adult Social Care savings that are already accounted for within the Council's budget. The main risks attach to the ability of the Council to acquire appropriate properties at the right price and not overspend on remodelling works.
- 4.16 It is important to note that there are three LHA zones in the borough and that one of them has a very low LHA rent relative to the others. At that rental level, it is unclear that any appraisal would be financially viable without exempt status.

## **5.0 Legal Implications**

- 5.1 Advice has been obtained from counsel regarding this matter. A summary of the advice follows:
- 5.2 NAIL tenants would be able to secure Non - HRA Rent Rebates above LHA rates for accommodation provided by Brent outside of the HRA as it would be non-HRA rent rebate accommodation. As such, there are no restrictions on the amount of rent payable by way of housing benefit, save for the potential application of the benefit cap. The Benefit cap may not be a realistic concern given that most of the residents will be claiming either DLA or PIP.
- 5.3 It is almost impossible to know how rent rebates would be affected by Universal Credit from 2019 onwards for new claimants. The application of the LHA to social rents has been postponed until 2019 at the earliest. The written statement of the Secretary of State on the subject, dated 15 September 2016, is ambiguous which makes it impossible to advise clearly as to what the position will be. It seems unlikely in the current environment that the system will remain as it currently is and that the LHA limit will apply.
- 5.4 BHP manages council owned Non-HRA funded properties with support delivered by a support provider appointed through the Council via a tendering process. However, BHP does not seem to satisfy the conditions for Exempt Accommodation for the following reasons:
- 5.5 The definition of exempt accommodation is found in paragraph 4(10) of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006/217:  
“ “exempt accommodation” means accommodation which is—  
(b) provided by a non-metropolitan county council in England within the meaning of section 1 of the Local Government Act 1972, a housing association, a registered charity or voluntary organisation where that body or a person acting on its behalf also provides the claimant with care, support or supervision”
- 5.6 Assuming BHP to be a housing association for these purposes, the first question is whether it is providing the accommodation. However, BHP is only a managing agent and is arguably therefore not considered to be the provider

as this term refers to the landlord to whom rent is ultimately payable and not to a managing agent.

- 5.7 Assuming that hurdle could be overcome - which is doubtful - the question becomes whether BHP "or a person acting on its behalf" provides the tenant with support. The acid test here must be that it is the landlord that has ultimate responsibility for providing the support. If BHP is the landlord, it does not provide the support it is merely involved in the provision of support on behalf of others. There is no "form of interposition" for the landlord in providing these services (paragraphs 51 and 52 of CH/423/2006, per Commissioner Turnbull). More specifically, in Circular A22/2008 it was expressly said "If the care, support or supervision is not directly provided by the landlord or by someone acting on their behalf, for example if all the care, support and supervision are independently commissioned by Social Services, then 'exempt accommodation' status will not apply."
- 5.8 It therefore seems that BHP does not satisfy the conditions for exempt accommodation.
- 5.9 It may be that one of the definitions of "specified accommodation" in reg 75H of the Housing Benefit Regulations 2006 apply. Regulation 75H(3) provides - "(3) This paragraph applies to accommodation—  
(a) which is provided by a relevant body;  
(b) into which the claimant has been admitted in order to meet a need for care, support or supervision; and  
(c) where the claimant receives care, support or supervision."
- 5.10 "Relevant body" has the same definition as in the definition of exempt accommodation; BHP would qualify as a housing association. Query again whether the accommodation could be said to have been provided by BHP when they are only the managing agent, and the comments raised above are relevant here.
- 5.11 Assuming that can be overcome, the test is whether the claimant has been "admitted in order to meet a need", i.e. it cannot be care that is provided in the claimant's home. That would be satisfied in the instant case because the NAIL project is to create accommodation into which people would move as their needs arose as an alternative to residential care.
- 5.12 The requirement under this provision is only that the claimant receives the care, not that it is provided by any particular individual. Accordingly, the difficulties identified above do not arise.
- 5.13 It follows that, if BHP could be said to be providing the accommodation, the accommodation would be specified accommodation.
- 5.14 If BHP were reintegrated into the Council the accommodation would not be provided by any qualifying provider. The exempt status would then clearly not apply.
- 5.15 Post 2019-20, if the Council were to lease the schemes it develops to Housing Association Registered Providers so these organisations are undertaking the housing management, whilst it is difficult to predict the future, if LHA applies to

social rents (including supported accommodation) then it will make little difference whether the landlord is an RPR or the council. Where the difference may occur is in respect of whether the accommodation is exempt. Again, there would be some difficulties if the RPR is simply managing the properties rather than operating them as the landlord. That may be different if the schemes are fully leased: the RPR may well then be the landlord and the accommodation may come closer to being exempt or specified accommodation.

## **6.0 Diversity Implications**

- 6.1 The capital investment requested would make accommodation available to customers with learning disabilities and mental health support needs who could not be supported within the NAIL Programme in significant numbers until new-build schemes begin to become available towards the end of 2017.

## **7.0 Staffing/Accommodation Implications**

### **7.1 Staffing Capacity Requirements**

To support the implementation of the mitigation plan, prevent any bottlenecks likely to cause delays with attendant loss of savings, and provide an appropriate degree of control over the process some additional staffing capacity will be required.

Capacity will be required over a two year period to identify and appraise properties to be acquired, and negotiate with landlords. Project Manager capacity will be required to manage conversion and adaptation works to the acquired properties, supported by a Project Officer to assist with procurement/ planning/ purchasing/ invoicing.

Further discussion will be required about how this additional capacity can be provided.

## **Background Papers**

None

## **Contact Officers**

Jon Burgoyne  
Programme Manager (NAIL)  
020 8937 4216  
[jon.burgoyne@brent.gov.uk](mailto:jon.burgoyne@brent.gov.uk)

Ian Buchan  
Lead Commissioning Manager - Accommodation , Adult Social  
020 8937 4149  
[ian.buchan@brent.gov.uk](mailto:ian.buchan@brent.gov.uk)

Helen Woodland  
Operational Director, Adult Social Care  
020 8937 6168  
[Helen.woodland@brent.gov.uk](mailto:Helen.woodland@brent.gov.uk)

PHIL PORTER  
Director of Adult Social Care