



Cabinet

15 October 2018

Report from the Strategic Director of Community Wellbeing

Proposal To Join 'Capital Letters' – A Lettings Company Owned by a Consortium of London Authorities

Wards Affected:	ALL
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	Four: <ul style="list-style-type: none">• Background Detail• Allocations Policy Principles• Extract from Articles of Association• Proposed Timescale for Phased Implementation
Background Papers:	None
Contact Officer:	Hakeem Osinaike Operational Director, Housing Email: hakeem.osinaike@brent.gov.uk Tel: 020 8937 2023 Laurence Coaker Head of Housing Needs Email: laurence.coaker@brent.gov.uk Tel: 020 8937 2788

1.0 Purpose of the Report

- 1.1 The housing pressures on low income households in London have perhaps never been higher, and a more co-ordinated effort is required from Councils across London to source an improved supply of suitable accommodation to meet demand. London Housing Directors and London Councils have been working on a model which would enable better outcomes for homeless / at risk households and for Councils. The result of which is "Capital Letters", the details of which are set out in Appendix 1.
- 1.2 This report sets out the reasons for joining "Capital Letters", a proposed joint endeavour between a group of London boroughs to jointly procure affordable Private Rented Sector accommodation across London, delivering at least the same level or potentially more PRS accommodation. The aim is to reduce costs and increase the supply of accommodation to use for the prevention and relief

of homelessness or to end a main homelessness duty. One of the objectives is improved outcomes for homeless families.

- 1.3 This report also sets out the benefits and risks of joining “Capital Letters”.this approach.

2.0 Recommendations

That Cabinet:

- 2.1 Note the £39 million over three years potentially being made available by the Ministry of Housing, Communities & Local Government specifically for pan-London collaboration on the procurement of accommodation for homeless households.
- 2.2 Approve the decision for the Council to join a letting company to be named Capital Letters London Ltd, a Company Limited by Guarantee that will be established by the London boroughs, as an A member.

3.0 Context

- 3.1 When a household approaches the Council in housing need, the Housing Options team makes a formal assessment against a number of criteria as prescribed in homelessness legislation. If it is not possible to prevent homelessness, and the household has met the legislative criteria, there is a statutory duty to secure suitable accommodation for the household.
- 3.2 The demand for affordable housing in Brent continues to be one of the major challenges that the council faces with high demand being primarily driven by households being evicted from the Private Rented Sector (PRS) due to affordability. Since the implementation of the Homelessness Reduction Act 2017, there has been a 57% increase in the number of homelessness presentations received during the period of April to July 2018, compared to the same period in the previous financial year. The growing number of applications and our obligations within the legislation means that we have to explore ways on increasing the number of properties available to us to discharge our duties to homeless households.
- 3.3 Due to the lack of supply of social housing the Council is using the power to meet new demand from homeless households with accommodation in the Private Rented Sector (PRS). However, there is an insufficient supply of PRS accommodation that is affordable in Brent. Some homeless households are therefore still placed in temporary accommodation, or in PRS accommodation outside of Brent.
- 3.4 There are just under 2,500 homeless households currently living in temporary accommodation in Brent. The majority are living in PRS properties leased by Housing Associations through the HALS scheme. However, the number of HALS units have been steadily decreasing due to owners not renewing the

lease when it ends because they can get higher rent levels by letting privately, resulting in the family becoming homeless again.

- 3.5 The council is therefore implementing various initiatives including acquiring properties through i4B and exploring other possible options through a review of the Allocation Scheme.
- 3.6 Capital Letters will sit alongside these initiatives to further increase the supply of affordable PRS accommodation available in or nearer to Brent, to help meet the growing demand from households who are homeless or threatened with homelessness.

4.0 Background

- 4.1 Capital Letters is a new initiative, which will seek to help increase the supply of affordable PRS available in Brent, by working collaboratively and avoiding competition between London Councils for the same privately owned properties. Capital Letters is being supported by the Ministry of Housing, Communities & Local Government (“MHCLG”) using top sliced Flexible Homelessness Support Grant (FHSG), to alleviate the costs to boroughs of providing accommodation and to encourage greater efficiency. The funding will provide extra staffing, IT and other resources to increase supply and improve the service offered to both tenants and landlords. It will also be used to subsidise the cost to boroughs for newly procured properties. These are costs Brent would have to pay anyway, if the subsidy was not on offer. Also, by top slicing the FHSG, MHCLG are effectively reducing the amount of funding available to boroughs who are not members of Capital Letters.
- 4.2 Due to the lack of affordable accommodation across London, boroughs compete with each other to secure the limited supply that is available. This will often lead to Brent securing accommodation in a neighbouring borough, and that borough securing accommodation in Brent, displacing 2 households from their “home” borough. It also means that owners who own a portfolio of properties across several boroughs are required to deal with different systems and schemes operated by the different boroughs.
- 4.3 By removing unhelpful competition between Brent and other London boroughs and duplication of effort, and by developing an organisation to represent all the London boroughs, it is intended to offer a simpler and more straightforward interface for landlords, managing agents and developers anywhere in London who are able to provide properties for those households most in need of accommodation, and help them to remain in their own borough.
- 4.4 Capital Letters will collaboratively procure new properties on behalf of London boroughs supported by the MHCLG top-slice and on a pan-London basis. In addition to the top-slice the pan-London procurement is likely to have a deflationary effect on procurement and allow a more rational allocation of supply across London, allowing Brent households to remain in or closer to the borough. The Allocations Policy Principles are set out in Appendix 2.

- 4.5 Capital Letters will grow in phases, with an initial number of boroughs joining in the first year, followed by phase two one year later, and eventually including, if not all, then the clear majority of London boroughs. There are also two types of membership, A and B.
- 4.6 An extract from Articles of Association noting the distinction between membership A and B is contained in Appendix 3. However the main distinction is that as an "A" Member Brent will have access to additional MHCLG subsidy for newly procured properties. "A" Members would also need to ensure that at least 50% of the total number of properties procured to support the discharge of their statutory responsibilities for homeless households is to be procured by the Company.
- 4.7 This is to ensure that "A" member boroughs do not continue to procure the majority of their properties through in-house teams, effectively competing against Capital Letters. Officers have confirmed that properties Brent are purchasing through i4B acquisitions programme for ending the main homelessness duty, is excluded from the 50% requirement. This is because i4B are buying properties on the open market and would not therefore be competing with Capital Letters who are procuring PRS property for letting.
- 4.8 Brent staff who are currently responsible for procurement of PRS accommodation in London will be seconded into Capital Letters and will continue with the procurement activities they were previously undertaking for Brent. Officers will not be transferred under TUPE into Capital Letters, as this would make it more complicated for them to return if the company fails or Brent decide not to continue with the agreement.
- 4.9 Each member borough is guaranteed to get at least the same number of new properties as their seconded staff had achieved in the previous year. This means that Brent would at least achieve the same level of performance as the previous year but at lower cost due to the subsidy. However, the expectation is that these numbers would be significantly exceeded because of extra MHCLG funded staff and a more streamlined operation across London.
- 4.10 Brent will therefore secure more PRS properties in London within or close to Brent, for the prevention and relief of homelessness or to end a main homelessness duty. This will reduce the need to place families in temporary accommodation or in PRS accommodation further away or outside London. Brent will also benefit from MHCLG subsidy, reducing the cost of procuring PRS accommodation.
- 4.11 Capital Letters will be established as a Company Limited by Guarantee, wholly owned by the member boroughs.

Options Appraisal

5 Join ‘Capital Letters’

5.1 Benefits

- 5.1.1 By being a member of Capital Letters, Brent will be able to add the acquisition power of the company to the suite on interventions to deliver more affordable PRS to homeless households. Membership comes with a promise of the delivery of at least the number of PRS accommodation procured by member boroughs in the previous year but with more resources, it is likely to deliver more. Each additional home delivered means a better offer to families at risk of homelessness through a reduction in TA, which is also financially beneficial to the Council.
- 5.1.2 It is proposed that Capital Letters will be set up according to the timescale set out in the table in Appendix 4 in a number of phases, so that not all boroughs are required to join at first. There are a number of reasons why it would be advantageous for Brent to be part of the first wave of boroughs which are anticipated to start operations in April 2019.
- 5.1.3 The MHCLG subsidy per borough will be greater in the first year. This is important in terms of the proportion of centrally funded staff compared to borough funded staff, which should provide a greater uplift to procurement numbers for the boroughs in the first wave. The MHCLG subsidy per property will also be greater in the first year.
- 5.1.4 Boroughs joining in the first year will receive an additional year’s subsidy from MHCLG.
- 5.1.5 The boroughs involved in the set-up of the company will have more influence over the way it is set up and shaped than boroughs who join later after the organisation has been established. Early indications are that 16 London boroughs may join Capital Letters in the first wave, so no borough will have a decisive voice.
- 5.1.6 Based on the number of boroughs involved, not all boroughs will be represented on the Board by a director. The Board would comprise of a number of directors from Member Boroughs as well as other directors with a range of skills and experience from legal, finance etc. Member Boroughs will agree between them who to appoint as Company Directors, and clarify what decisions are reserved for this Members Committee and which are delegated to the Board of Directors. (Quite a few local housing companies have a similar governance structure with a Shareholder Committee for strategic decisions and then a Board of Directors for operational management). Brent’s intention is to actively seek to have a representative on the Board.
- 5.1.7 Boroughs who do not join Capital Letters will still have properties procured by Capital Letters in their area. Although Capital Letters will abide by the agreed Inter-Borough Accommodation Agreement (IBAA) rates, there is nevertheless

a significant risk that landlords and agents will prefer to work with Capital Letters than with individual boroughs because of the profile it will have when launched, and because of the more streamlined ability to let properties across London with one organisation than with a number of different boroughs, all with slightly different terms and conditions and different personnel.

- 5.1.8 The Council may decide to join the company in the first phase and as an A member. This option enables the Council to derive the full benefits from the company and to be part of the group that sets its future direction. This is the recommended option.
- 5.1.9 The Council may join the company in the first phase but as a B member. This would still enable the Council to receive services from Capital Letters but would mean that the Council has less influence over the strategic direction of the company. It also means that Brent would not have access to MHCLG subsidy for newly procured properties.

5.2 Risks

- 5.2.1 The Council is not investing any money into the company, which is a company Limited by Guarantee, owned and managed by the boroughs who constitute limited liability members of the company. The liability is limited to £1. However, if the company makes losses, then the shareholders, of which Brent will be one, would need to decide how to fund these.
- 5.2.2 However there are potentially other risks associated with joining Capital Letters, as outlined below along with mitigating factors;
- 5.2.3 Loss of control of a Shared Service
 - 5.2.3.1 Capital Letters will be a distinct company, set up for the benefit of member boroughs, to increase the supply of PRS accommodation to help meet demand from homeless households. Joining this newly created company means membership of a shared service, which means Brent loses control of the service. The company will have a Members Committee and a Board of Directors, made up of representatives from member boroughs who will be responsible for ensuring that the company delivers the agreed business plan to achieve an increase in supply of affordable accommodation in London. Brent's intention is to actively seek to have a representative on the Board and through this, we will closely monitor activities, with the aim of achieving our objectives. If the company is successful for us, the wider company is likely to be successful.
 - 5.2.3.2 If Capital Letters does not work, the Council can cease to be a Member of the Company by serving six months' written notice to do so. As we will be using the company to secure PRS properties for the prevention and relief of homelessness or to end a main homelessness duty, there is no ongoing relationship with the tenant or landlord (beyond the

statutory duty to households to whom we end the main duty to, if they become homeless again within 2 years).

5.2.4 Disruption in the supply of PRS accommodation to meet homelessness demand.

5.2.4.1 As the company beds down, there may be some disruption in procurement of accommodation. However, the staff seconded into Capital Letters will continue with the procurement activities they were previously undertaking for Brent and will be supplemented by approximately 20 additional staff employed directly by Capital Letters. It is anticipated that this will lead to additional properties within Greater London being procured in the first three years. Boroughs will be allocated at least as many properties over the first year as were procured by the staff it seconds in the previous year.

5.2.5 Officers are TUPEed into Capital Letters, making it difficult for them to return if the company fails

5.2.5.1 The Council will only agree to officers being transferred to Capital Letters on a secondment basis. In a situation where the Council decides to exercise its right to leave the company, seconded staff will simply return to the management of the Council, when the notice expires.

6 Do not join ‘Capital Letters’

6.1 Benefits

6.1.1 We retain control of our PRS procurement service but we do not add anything to our suite of interventions for homeless households.

6.2 Risks

6.2.1 Not joining Capital Letters would mean our procurement team will be in competition with Capital Letters for properties in Brent and elsewhere in London, a competition we may struggle to win. In addition, this would mean Brent not having access to MHCLG funding that is being made available to the company.

6.2.2 The Council could decide not to join the company in the first phase. This would result in a lost opportunity to access MHCLG grant funding, alleviate the costs of providing accommodation to increase the procurement of affordable PRS accommodation and move away from expensive nightly paid temporary accommodation and to enable the placement of households in or closer to Brent.

7.0 Financial Implications

- 7.1 The main financial benefit of joining the company is to access MHCLG funding and increase the number of properties sourced to reduce the need for High Cost Temporary Accommodation, thereby saving money in the General Fund.
- 7.2 In the first 2 years the proposal is for MHCLG to contribute £2k in incentive payments per property. This equates to £140k saving per annum based on 70 properties being procured. This incentive contribution ends after year 3, with no confirmation that MHCLG will continue funding.
- 7.3 The Council is expecting a reduction in HALS properties as landlord start to leave the TA market due to lower returns compared to PRS. It is envisaged that Capital Letters will mitigate some of this loss by building a portfolio of its own leased properties for use as TA or as a Private Sector Landlord.
- 7.4 The Capital Letters business plan (awaiting actual model) is incredibly ambitious, which brings a level of risk. The business plan assumes a £2.89m surplus over the initial 3 years. However, a 1% increase in voids and bad (6% to 7%) would result in a £1m deficit of the same period. This will need to be reviewed carefully as part of the process for establishing the company.

8.0 Legal Implications

- 8.1 It is proposed that there will be no fewer than three directors and no more than twelve directors on the Board of the Capital Letters. These directors will include directors appointed by "A Members" and directors nominated by "B Members" (who are agreed and appointed by A Members) and independent directors. The company will be established as a private company limited by guarantee and will be wholly owned by the member boroughs who constitute limited liability members of the company. The governance arrangements of the company are set out in the draft Articles of Association of the company and Members Agreement. Critical matters are reserved to the Members and this is set out in the Members Agreement. It will be noted from the Articles that should the council wish to cease to be a member of Capital Letters, it may do so by serving no less than six months' notice in writing.
- 8.2 The primary homelessness legislation – [Part 7 of the Housing Act 1996](#) – provides the statutory under-pinning for action to prevent homelessness and provide assistance to people threatened with or actually homeless. Under the duty to provide temporary accommodation to homeless households whose homelessness applications have been accepted, local housing authorities must ensure that suitable accommodation is available for the applicant and their household until this duty is brought to an end, usually through the offer of a settled home. The duty can also be brought to an end for other reasons, such as the applicant turning down a suitable offer of temporary accommodation or because they are no longer eligible for assistance. A suitable offer of a settled home (whether accepted or refused by the applicant) which would bring this duty to an end includes an offer of a suitable secure or introductory tenancy with a local authority, an offer of accommodation through a private registered

provider (housing association) or the offer of a suitable tenancy for at least 12 months from a private landlord made by arrangement with the local authority.

- 8.3 It is proposed that Capital Letters is wholly owned by the member boroughs who constitute limited liability members of the company. The intention is for the boroughs to procure a supply of accommodation and management services through Capital Letters. Section 12 of the Public Contracts Regulations 2015 (PCR 2015) now specifically includes provision regarding joint arrangements between contracting authorities. Section 12(7) states:

A contract concluded exclusively between two or more contracting authorities falls outside the scope of this Part where all of the following conditions are fulfilled:--

- (a) *the contract establishes or implements a co-operation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;*
- (b) *the implementation of that co-operation is governed solely by considerations relating to the public interest; and*
- (c) *the participating contracting authorities perform on the open market less than 20% of the activities concerned by the co-operation.*

Any arrangement to establish Capital Letters between Brent Council and the other boroughs would therefore need to comply with the above requirements to ensure that the Council and the other boroughs can procure a supply of accommodation and management services through Capital Letters without breaching the PCR 2015.

- 8.4 It is proposed that Brent becomes an “A” Member of Capital Letters. One of the conditions of being an “A” Member is that the council must ensure that at least 50% of total procurement of dwellings to support the discharge of its statutory responsibility for homeless households or those at risk of homelessness (excluding nightly paid properties or properties outside the London area) is to be procured by Capital Letters. Any failure to achieve such percentage could lead to termination of the “A” member’s membership.

9.0 Diversity Implications

- 9.1 A full equality impact assessment will be completed before the company is set up.
- 9.2 The public sector equality duty, as set out in section 149 of the Equality Act 2010, requires the Council, when exercising its functions, to have “due regard” to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, to advance equality of opportunity and foster good relations between those who have a “protected characteristic” and those who do not share that protected characteristic. The protected characteristics

are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

- 9.3 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
- 9.4 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary.

Report sign off:

PHIL PORTER
Strategic Director of Community Wellbeing

